

Memorandum of Support

The Protection of Children During Custodial Interrogation Act

A5891-C (Joyner) / S2800-C (Bailey)

April 27, 2022

Brooklyn Defender Services (BDS) **strongly urges the New York State Legislature to pass A5891-C (Joyner) / S2800-C (Bailey)**. This is long-overdue legislation that would protect the rights of children in police custody and align New York State's practice regarding these young people with our values as a State and available science regarding brain development.

Brooklyn Defender Services (BDS) is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation and other serious legal harms by the government. For over 25 years, BDS has worked in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality.

We represent approximately 25,000 people each year who are accused of a crime, facing loss of liberty, their home, their children, or deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

THE PROBLEM

Children under the age of 18 are a vulnerable population whose experiences during their formative years can shape the trajectory of their lives. Yet New York State has thus far failed to offer them meaningful support and protections during police interrogations, which even adults find traumatic, stressful, and difficult to understand. Our legal system has expected children to make informed decisions in their own interest under these circumstances and has exacted harsh punishments when they fail to do so. The result has been children who have unknowingly waived their rights, damaged their own self-interests, and failed to protect themselves. By passing A5891-C (Joyner) / S2800-C (Bailey), New York State will be making a statement that children's rights are worth protecting.

New York State currently fails to incorporate a current understanding of children’s development and behavior into its treatment of children in police custody. There are no provisions for mandatory access to legal counsel. There are no measures in place to ensure that children can effectively protect their constitutional right to remain silent. Current law fails to define essential terms, such as “immediate,” “necessary,” and “reasonable,” thus leaving all critical decisions regarding custodial interrogation of children up to police personnel.

Children’s Brain Development

The sponsors’ Memorandum in Support includes an apt discussion of the current recommendations by experts in children’s cognition regarding brain development and interrogation. The last decade has also given rise to a series of Supreme Court decisions that rely upon science, social science, and common sense to require that children be treated differently than adults in criminal proceedings.¹ It is past time that New York State law reflected these developments.

Understanding Miranda

The Constitution requires that the waiver of a person’s right to remain silent is knowing, voluntary and intelligent.² However, under existing law, there are no requirements beyond a rote recitation of *Miranda* warnings by police personnel to ensure that young people – or their parents – truly understand their rights while in custody. During the discovery process, BDS attorneys representing children are often provided with *Miranda* sheets stating that the child was informed of their rights. These sheets are initialed and signed by young people during custodial interrogations indicating their agreement to waive their rights. These sheets may be signed hours after the child is taken into custody and the circumstances surrounding the waiver are often unclear. Young people regularly report to us that they did not understand that their statements could be used against them or that they could have remained silent even after signing the document. They also report signing due to their belief that they could leave if they gave the statements the police were seeking. Videos reviewed by attorneys at BDS reveal a clear lack of understanding on behalf of these young people even after they have been read *Miranda* warnings and signed the waivers.

¹ See *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (“[N]o matter how sophisticated, a juvenile subject of police interrogation cannot be compared to an adult subject.”), *Miller v. Alabama*, 567 U.S. 460 (2011), *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 560 U.S. 58 (2010).

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

Current Notification Guidelines for Law Enforcement are Not Stringent

Under Raise the Age legislation, “immediate” parental notification prior to the waiver of *Miranda* is a requirement for children. However, there are limited enforcement mechanisms, and the requirement is simply that “reasonable efforts to notify” a parent or guardian are made.³ Notification has been deemed “immediate” even if significant time passes in police custody prior to such notification, including time spent at the scene and during transport to the precinct.⁴ If a parent cannot promptly appear at the precinct for any reason, a child’s statement may be taken. Children may also make admissible statements in police custody prior to parental notification.

Parental Presence is Insufficient to Protect Children’s Rights

We echo the concerns raised about parental influence on *Miranda* waivers in the sponsor’s Memorandum in Support.⁵ It can be understandably difficult for a parent to provide dispassionate advice in such a high-stress and upsetting situation as a child’s detention by police. In practice, we see parents who encourage their children to speak to the police against their child’s best interests out of fear, respect for law enforcement, frustration, shame, humiliation, lack of understanding or naivete regarding their children’s cases. We see recorded interviews and read transcripts where police officers leverage a parent’s presence to elicit statements from a child by making claims such as, “You don’t want to lie in front of your mom,” or “Your mom deserves to know the truth.” We see police record interviews without notifying the parents or children that they are being recorded, then continue to record when police leave the room, and the child confides in their mother or father. We see parents join in the active questioning of a child because they have concerns about their child’s activities and demand answers. We see parents whose interests are at odds with those of their child, as they may be compelled to distance themselves or their other children from suspected criminal behavior. We see parents who view the police as a potential source of behavioral or interventive services for their children and who do not understand the legal ramifications of providing incriminating statements. Put simply, there is no substitute for professional legal counsel during a custodial interrogation.

³ In *Matter of Raphael A.*, 53 A.D.2d 592 (1st Dept. 1976) (Holding that when a mother’s arrival took two hours her child’s statements in her absence were admissible).

⁴ See *Emilio M. v. City of New York*, 27 N.Y.2d 173, 371 N.Y.S.2d, 697 (1975).

⁵ NYS Assembly Memorandum in Support of Legislation, Justification (“Unfortunately, the presence of a parent does not adequately ensure that a child makes a knowing, voluntary and intelligent decision with respect to his or her *Miranda* rights.”)



False Confessions

New York State's failure to protect children during custodial interrogations also does not necessarily yield reliable information. These cases sometimes make the news, such as the case of the exonerated Central Park 5, Black teenagers between the ages of 14 and 16 whose false confessions were extracted during unaccompanied police interrogations in 1989. Despite the national attention that their case, convictions, and ultimate exonerations continue to receive to this day, we at Brooklyn Defender Services see that many young people are still being subjected to questioning by police under similar circumstances here in New York.

SOLUTION

Our state currently fails to protect the rights of children during custodial interrogations. This is immoral, unconstitutional, and contrary to our values as a State. Therefore, Brooklyn Defender Services (BDS) strongly urges the New York State Legislature to **Pass A5891-C (Joyner) / S2800-C (Bailey)**. Among other fixes, the proposed bill:

- Requires that the child consults with an attorney, whether in person, over the phone, or by video conference prior to any questioning or waiver of rights, and ensures that this consultation cannot be waived;
- Defines "immediate" notification of a parent or guardian as prior to the child's removal from the place of arrest;
- Creates mechanisms for recourse for violations of these requirements, namely the suppression of statements where an attorney was not consulted, where parents did not voluntarily waive *Miranda* and/or when questioning was not "necessary" under the statute.

Additionally, we are uniquely situated to address the fiscal implications raised by the sponsors' Memorandum in Support. As appointed counsel, defense attorneys currently meet and speak with the children we represent for the first time immediately prior to their arraignment in court. Not only would the proposed changes to the statute merely move up our involvement in the case by hours, but it would obviate many of the complications that arise from custodial statements that are made to police by children, including hearings to suppress these statements. It is our position that this bill is not only a moral imperative but a fiscally sound decision about the court and attorneys' time and resources.

CONCLUSION

Brooklyn Defenders

New York should take the protection of all children seriously, including those accused of crimes. Available data, science, Supreme Court holdings and the Constitution demand that children in police custody be afforded additional safeguards to ensure that they can exercise their rights and adequately protect themselves. Brooklyn Defender Services strongly supports the passage of A5891-C (Joyner) / S2800-C (Bailey).

If you have any question or comments about the testimony, please feel free to contact Jackie Gosdigian at jcaruana@bds.org.



**Memo of Support for
Requiring Consultation with Counsel before Police Interrogate Children
(S.2800-B - Bailey / A.5891-C - Joyner)**

The Children's Defense Fund (CDF) envisions a nation where marginalized children flourish, leaders prioritize their well-being and communities wield the power to ensure they thrive. CDF's Leave No Child Behind mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start and a Moral Start in life and successful passage to adulthood with the help of caring families and communities.

We serve and advocate for the largest, most diverse generation in America: the 74 million children and youth under the age of 18 and 30 million young adults under the age of 25, with particular attention to those living in poverty and communities of color. CDF partners with policymakers, aligned organizations and funders in this service. The Children's Defense Fund is the only national, multi-issue advocacy organization working at the intersection of child well-being and racial justice by wielding the moral authority of programmatic proximity and community organizing to inform public policy.

Established in 1995, the Children's Defense Fund-New York (CDF-NY) office has a unique approach to improving conditions for children, youth and families, combining research, public education, policy development, community organizing, and advocacy. We leverage our national influence to eliminate the harmful and disproportionate impact that poverty has on children in New York and to eliminate race and gender inequities in the areas of youth justice, child welfare, economic justice, early childhood, education, health, and housing.

We write in support of bill number S.2800-B - Bailey / A.5891-C – Joyner requiring children to consult with an attorney before any police interrogation.

Children are not the same as adults. Social, emotional and brain development continue across childhood and into young adulthood. Children and adolescents are more likely to act impulsively, make decisions based on emotion, and make short-term choices without seeing long-term consequences. Children are uniquely vulnerable to making an unknowing, unintelligent, or involuntary waiver of their *Miranda* rights—Constitutional rights which are intended to protect them.

Despite this well-grounded understanding of children, under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a child in order to induce that child to waive their right to remain silent.

- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child's parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child's right to remain silent because they do not understand the right either, the stress of their child's situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are Black and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from poor communities, the protections of *Miranda* are often illusory.

Summary of the Legislation

S.2800-B/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please reach out to Julia L. Davis, Director of Youth Justice & Child Welfare, Children's Defense Fund-NY at jdavis@childrensdefense.org.



Memo of Support for Requiring Consultation with Counsel before Police Interrogate Children (S.2800-C - Bailey / A.5891-C - Joyner)

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why The Children’s Law Center (“CLC”) supports S.2800-C/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

The Children’s Law Center (“CLC”) is a 25-year-old, not-for-profit law firm that has represented over 130,000 children in legal proceedings in the New York City Family Courts and the New York State Supreme Court Integrated Domestic Violence Parts. We are the first organization in New York City dedicated primarily to the representation of children in custody, guardianship, and visitation matters, and we also represent children in child protective, paternity, and family offense cases. In each case that CLC is assigned, we strive to give our young clients an effective voice in the legal proceedings that have a critical impact on their lives. It is because of CLC’s significant experience representing children, especially from low-income communities and communities of color, that we understand how critical this bill is for New York City’s youth.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child’s parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child’s right to remain silent because they do not understand the right either, the stress of their child’s situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-C/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800-C/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

Contacts: Karen Simmons, Executive Director, 718-522-3333 x 123, ksimmons@clcnny.org
Louise Feld, Writing and Policy Attorney, 718-522-3333 x 143, lfeld@clcnny.org

The logo features a large orange hashtag symbol (#) on the left. To its right, the words "RIGHT2REMAIN" are written in a bold, blue, sans-serif font. Below "RIGHT2REMAIN", the word "SILENT" is written in a larger, bold, blue, sans-serif font, with the "S" being significantly larger than the other letters.

Alan Levine
President

Zachary W. Carter
Chairperson of the Board

Janet E. Sabel
*Attorney-in-Chief
Chief Executive Officer*

**MEMORANDUM IN SUPPORT OF BILL THAT WOULD PROTECT CHILDREN
WHO ARE SUBJECT TO CUSTODIAL INTERROGATION**

A.5891-C/S.2800-C

AN ACT to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement

Purpose of the Bill:

This bill would protect children by ensuring that any waiver of *Miranda* rights by a child is knowing, voluntary and intelligent.

Grounds for Support:

The Legal Aid Society urges the Legislature to enact S.2800-C/A.5891-C, which clarifies under what circumstances a juvenile may be interrogated and the precautions necessary to ensure that no waiver of the right to remain silent is ever exercised unless it is done knowingly, intelligently and voluntarily.

The sponsor's Memorandum in Support of this bill presents scientific and legal truths that highlight the need for its passage. The recent Netflix series "When They see Us," a dramatization of the real life experiences of the Exonerated Five, is a glaring portrayal of how desperately our most vulnerable population needs more protection than we currently provide them. Even under the best of circumstances, an adolescent cannot independently and adequately fully appreciate the rights provided by the Fifth Amendment, and what it means to waive those rights. Add the stress and tension inherent in a custodial interrogation, and the prospect of a knowing, intelligent and voluntary waiver of the right to remain silent becomes a myth. Furthermore, research makes clear that those youth most likely to come into contact with law enforcement and the juvenile justice system are the youth with the most limited capacity to appreciate their rights. And while false confessions are just the tip of the iceberg when it comes to these waivers, these are the same youth who are most susceptible to police coercion and most likely to say whatever they think is most likely to immediately relieve them from the stress and pressure they must endure while being interrogated. The presence of a parent is of little or no assistance in making this critical judgment, and indeed is often a hindrance. There are too many factors for parents to wrestle with for them to be relied upon to provide the necessary perspective and support. Too often, the parent or guardian fails to appreciate what is at stake any more than the youth does. Sadly, there is often a conflict between the youth's interest and those of the

parent or other family member, in which case the youth is worse off than they would be on their own.

This bill is not intended to demonize law enforcement. While abuses may occur, the greatest risk comes from the limited capacity of the young people themselves to adequately appreciate what is at stake and to exercise judgment regardless of police conduct. This bill would provide the needed protection. It would require that the youth first consult with counsel before any such questioning can take place. The consultation with counsel would be a non-waivable requirement, and a statement taken from a young person in violation of that requirement would not be permitted to be entered into evidence against the youth.

This bill would also be fiscally responsible because it authorizes consultation with the attorney by telephone and would dramatically reduce the number of in court hearings challenging statements made by youth and the cost of such hearings. It would also protect this State and localities from losses due to lawsuits brought by individuals who were wrongfully convicted based upon false confessions as children. According to the National Registry of Exonerations, 36 percent of all exonerees from 1989 to 2020 were under 18 years old at the time of the alleged offense.¹ According to the Innocence Project, exonerees in New York who were wrongfully convicted for alleged offenses when they were under 18 have won compensatory civil damages amounting to almost \$77.5 million since 2011. Needless to say, the cost of providing counsel for children when police wish to interrogate them would be far less.

In addition to being fiscally responsible, this bill offers an opportunity for our government to take a step to address racial and economic inequity in our state. We know that the children most likely to come into contact with law enforcement and the juvenile legal system are Black and Latinx children from over-surveilled schools and communities affected by poverty. These children come from families who are unable to hire attorneys to protect them. In contrast, affluent parents are able to ensure that their children have access to counsel before they decide to waive their *Miranda* rights. One result of this inequity is that many more Black and Latinx children are wrongfully convicted.² The Legislature can remedy this inequity by passing this bill to ensure that all children are provided with counsel when the police seek to question them.

Conclusion:

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected, reduce racial inequities and minimize the risk of harm arising from false confessions.

May 2022

¹ THE NAT'L REGISTRY OF EXONERATIONS, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confessed (2020), <http://www.law.umich.edu/special/exoneration/Pages/False-Confessions.aspx>.

² *Id.* Of all exonerees under age 18, 85 percent were Black.



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Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their Miranda rights.
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90% of youth waive their Miranda rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to Miranda waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of Miranda rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake even when the police do everything right. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive Miranda rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of Miranda are illusory.

The Proposed Legislation

S.2800-C/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth. We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s Miranda rights are protected and minimize the risk of harm arising from false confessions. For more information, please contact:
[Marvin Mayfield, Director of Organizing mmayfield@communityalternatives.org]

Sincerely,

Marvin Mayfield
Director of Organizing CCA



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Memo in Support of A5891C/S2800C
A bill to protect children who are subject to custodial interrogation
May 2, 2022

The Center for Family Representation strongly supports the passage of A5891C/S2800C, which protects children who are arrested by requiring that they consult with an attorney prior to waiving any of their Miranda rights. The right to remain silent and the right to an attorney, as guaranteed under the Bill of Rights, are fundamental liberty interests protected by a Miranda warning. A5891C/S2800C recognizes that children lack the capacity to understand these important rights or when to assert them and should have the benefit of advice from an attorney prior to waiving any of their rights.

CFR represents juveniles in Family Court Act Article 3 delinquency proceedings in Queens and New York counties. CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every client is assigned an attorney and a social work staff member beginning at intake, which is generally the first day a client appears before a judge and CFR is assigned. CFR is also the New York City county-wide assigned indigent defense provider for parents who are respondents in Family Court Act (FCA) Article 10 proceedings in Queens and New York counties and represents those parents in collateral criminal court cases.

Our office has seen too many children waiving their Miranda rights without proper support or understanding of their actions. We have seen children being coerced into making false confessions through lengthy interrogations and manipulation. One former client was interrogated for close to eight hours before falsely confessing to a crime that he did not commit. Without the advice of an experienced attorney, the police told the child that he could go home if he simply told the police what they wanted to hear. When the child's father arrived at the precinct, he was unable to provide meaningful advice to his son. Faced with the possibility of their child being in trouble with the law, our client's father, like so many parents, was not able to make an objective decision or give useful advice. We cannot stress enough the pivotal role an attorney can play in preventing false confessions like these, as well as limiting police misconduct.

Due to the high pressure and power differential in a custodial interrogation by law enforcement and a child's premature brain development, we cannot expect that children will fully comprehend their constitutionally protected rights, let alone when to waive them.¹ Children often fail to comprehend the consequences of their decisions in general. One study found that only 20% of youth understood the Miranda warning, and a simplified version did not help.² Because of their brain development, children are fundamentally different from adults and require increased protections.

Interrogations, by nature, are coercive. Children are more likely to trust the police and answer any questions,

¹ M. Dyan McGuire, *Miranda is Not Enough: What Every Parent in the United States Should Know About Protecting Their Child*, 2 Journal of Law and Criminal Justice, 299-312 (2014).

² Barry C. Feld, *Behind Closed Doors: What Really Happens when Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 409 (2013).

especially when told that they can go home. Currently, 90% of youth waive their Miranda rights, leaving police free to interrogate children through deception, lies, and intimidation.³ This bill would ensure that all youth have access to an attorney so that they know and understand what their rights are and when, if ever, to waive them. This will help guarantee that youth will have the support necessary to make the decision about whether to give up their right to remain silent. An attorney is able to explain, with the added benefit of attorney client privilege, the pros and cons of choosing to answer a police officer's questions, thereby better protecting New York's youth.

For these reasons, and those outlined in the sponsors Memorandum in Support, we urge the New York State Legislature to pass this critical legislation to ensure that children's *Miranda* rights are protected.

For any questions, please contact Jennifer Feinberg, Litigation Supervisor for Policy & Government Affairs, jfeinberg@cfny.org.

³ A. Bruce Ferguson & Aman Charles Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39, 53 (1970).

From: Robert Dean <rdean@cfal.org>

Date: Thursday, May 5, 2022 at 4:35 PM

Dear Sen. Bailey:

I am reaching out because we at the Center for Appellate Litigation have been advocating for passage of the Youth Interrogation Bill S2800C/A5891C, which would require that all youth under 18 be provided an attorney before they can waive their right to remain silent. We are part of the #Right2RemainSilent coalition with over 100 organizations signing on in support of this bill. We urge you to vote in favor of this bill before the Senate Finance Committee and advance it to a floor vote.

It is well-supported by neurological and social science about the adolescent brain that youth do not adequately understand or appreciate the significance of their 5th amendment rights, particularly under pressure from law enforcement. Studies have additionally shown, consistent with the experience of the Exonerated 5, that youth are more likely to falsely confess than adults. This bill would prohibit the introduction of any statement taken through interrogation by law enforcement unless the child had consulted with an attorney either by phone, video conferencing, or in person. We consider this an issue of fairness and racial justice, as this bill would provide to all what youth from privileged typically receive—an attorney to protect their rights before they get to court.

In addition to the over 100 organizations who have signed on in support of the #Right2RemainSilent coalition, this legislation has the support of the NYC Bar Association, Safe Horizon (the nation's largest non-profit victims' assistance organization), DA George Gascon from LA (both CA and WA require consultation with an attorney before custodial interrogation of youth under 18), and many more. Further, Fair and Just Prosecutions, a national organization of prosecutors, issued a memo which explains why, without proper protections, interrogations of children can have serious negative consequences, including coerced and false confessions, wrongful convictions, trauma to youth, inadmissible evidence obtained through improper interrogations, diminished public confidence in the legal system, and an erosion of public safety.

We urge you to support this important bill by voting to advance it. Thank you.

Sincerely,

Kate Skolnick, on behalf of the Center for Appellate Litigation

NATIONAL JUVENILE JUSTICE NETWORK

Memo of Support for Requiring Consultation with Counsel before Police Interrogate Children (S.2800-B - Bailey / A.5891-C - Joyner)

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why the National Juvenile Justice Network (NJJN) supports S.2800-B/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

The National Juvenile Justice Network leads a membership community of 60 state-based organizations and numerous individuals across 42 states and D.C. We seek to shrink our youth justice systems and transform the remainder into systems that treat youth and families with dignity and humanity. Our work is premised on the fundamental understanding that our youth justice systems are inextricably bound with the systemic and structural racism that defines our society; as such we seek to change policy and practice through an anti-racist lens by building power with those who are most negatively affected by our justice systems, including young people, their families and all people of color.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child’s parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.

- Even if present, a parent or guardian may be unable to protect their child's right to remain silent because they do not understand the right either, the stress of their child's situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in "When They See Us" were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800-B/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact: Alyson Clements, Co-Director at NJJN.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alyson Clements', with a stylized flourish at the end.

Alyson Clements, Co-Director

The logo features a large orange hashtag symbol (#) on the left. To its right, the words 'RIGHT2REMAIN' are stacked above 'SILENT' in a bold, blue, sans-serif font. The '2' in 'RIGHT2REMAIN' is smaller than the other characters.

Memo of Support for Requiring Consultation with Counsel before Police Interrogate Children (S.2800-B - Bailey / A.5891-C - Joyner)

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why Youth Represent supports S.2800-B/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Youth Represent is dedicated to improving the lives and futures of young people impacted by the criminal legal system. We provide criminal and civil reentry legal representation to young people age 24 and under, assisting them with everything from rap sheet review to school suspensions to employment discrimination and any other legal needs they identify. We also engage in policy advocacy and youth leadership development through our Youth Speakers Institute. Our interdisciplinary approach allows us to understand our clients’ legal and practical challenges so we can effectively represent them from courtroom to community.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
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The Proposed Legislation

S.2800-B/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact Kate Rubin, Director of Policy, krubin@youthrepresent.org; (646) 759-8079.

Sincerely,

Kate Rubin
Director of Policy





Child Advocacy Clinic
St. John's University
School of Law
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April 29, 2022

Re. Memo in Support of S.2800-C (Bailey), A.5891-C (Joyner)

I am a Professor of Clinical Legal Education, and the Director of the Child Advocacy Clinic at St. John's University School of Law. I am writing in support of S.2800-C (Bailey), A.5891-C (Joyner), a bill that would provide counsel to children and youth during custodial interrogations. The proposed NYS legislation would ensure that a child's Miranda waiver is truly knowing, voluntary, and intelligent, by providing youth with a non-waivable consultation (in person, by telephone, or by video) with an attorney prior to a custodial interrogation.

Adolescence is a condition of evolving maturity, knowledge, and judgment. Because of this, the law has always recognized enhanced legal protections for children and adolescents. Yet in New York State, children are permitted to waive their Miranda rights and be interrogated by law enforcement without having consulted first with an attorney to advise them of the risks of doing so -- and 90% of accused children do just that. This is an issue that particularly affects children of color and children with intellectual or cognitive disabilities, who are grossly disproportionately represented in the juvenile justice system.

It does not take an expert in juvenile justice to appreciate how malleable and suggestible children and youth are generally, and time and again the Courts have recognized such. Starting at page 13, the attached bill text and sponsor memo notes that: "The consensus that adolescents' decision-making capabilities are not fully developed and that, for this reason, young people require unique legal protections has been recognized and embraced by the United States Supreme Court. Children are, in the Court's words, "generally less mature and responsible than adults;" "they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them"; and "they are more vulnerable or susceptible to outside pressures than adults." J.D.B.V. North Carolina, 131 S.Ct. 2394, 2397 (2011) (internal quotations omitted). In addition, the Supreme Court has recognized that children "have limited understandings of the criminal justice system and the roles of the institutional actors within it"

Graham v. Florida, 560 U.S. 48, 78 (2010)." It is my experience as a child advocate that they have even less understanding of the juvenile justice system.

The proposed NYS legislation would provide badly needed protections for children. From the Legal Aid Society: "S.2800-C/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake even when the police do everything right. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive Miranda rights while their more affluent peers are protected by hired attorneys."

As a child advocate, I strongly support the proposed legislation, which would mirror recent similar legislation enacted in California to make non-waivable the requirement that a child be provided with a consultation with an attorney prior to a custodial interrogation. This legislation would ensure that a child's Miranda waiver is truly knowing, voluntary, and intelligent. Having represented thousands of children over nearly three decades (and with apologies to Art Linklater), I can personally confirm that "court-involved kids say the darndest things," and that those things often have a devastating and disproportionate impact on children, families, and communities of color.

Very Truly Yours,


Jennifer Baum, Esq.
718-578-2286
baumj@stjohns.edu



Memo of Support

Requiring Consultation with Counsel before Police Interrogate Children

S.2800-C - Bailey / A.5891-C - Joyner)

April 29, 2022

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. **New York County Defender Services strongly supports S.2800-C/A.5891-C**, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

NYCDS is a public defense office that represents New Yorkers in thousands of cases in Manhattan’s Criminal Court and Supreme Court every year. Since 1997 NYCDS has represented more than 300,000 clients in their criminal cases and developed decades of expertise on the workings of the criminal legal system. Our staff include specialized juvenile attorneys who represent youth under the age of 18 in the youth part of Manhattan Supreme Court and in Manhattan Family Court.

Under current New York law:

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- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
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- Even if present, a parent or guardian may be unable to protect their child’s right to remain silent because they do not understand the right either, the stress of their child’s situation renders them unable to think clearly, or they have conflicting interests.

New York County Defender Services

100 William Street, 20th floor, New York, NY 10038 • t. 212.803.5100. f. 212.571.6035 • nycds.org

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

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The Proposed Legislation

S.2800-C/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact: Andrea Nieves, NYCDS Senior Policy Attorney at anieves@nycds.org.





April 27, 2022

Executive Director

Karen J. Freedman

General Counsel

Glenn Metsch-Ampel

**Memo of Support for
Requiring Consultation with Counsel before Police Interrogate Children
(S.2800C - Bailey / A.5891C - Joyner)**

The Netflix series “When They See Us” – a drama based on the prosecution of five innocent teens for a crime they did not commit – demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California recently passed a law (SB 203) to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why Lawyers For Children supports S.2800C/A.5891C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Lawyers For Children (LFC) is a not-for-profit legal corporation dedicated to protecting the rights of individual children in foster care and in delinquency proceedings in New York City and compelling system-wide child welfare reform. Since 1984, LFC has provided free legal and social work services to children in more than 30,000 court proceedings involving foster care, abuse, neglect, termination of parental rights, adoption, guardianship, custody, visitation and juvenile delinquency. This year, our attorney-social worker teams will represent over 3000 children and youth in the New York City Family Courts.

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S.2800C/A.5891C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800C/A.5891C would provide the needed protection. Current law provides that police may interrogate a child when it is necessary. This bill would clarify that interrogation of a child is necessary only when the life and safety of the subject child or another person is in danger. When police determine interrogation is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

Sincerely,



Karen Freedman
Executive Director



Betsy Kramer
Public Policy Project Director

INNOCENCE PROJECT

Memorandum of Support for Requiring Consultation with Counsel before Police Interrogate Children

A. 5891B (Joyner) / S. 2800B (Bailey)

The Innocence Project works to prevent and address the causes of wrongful convictions. A. 5891B (Joyner) / S. 2800B (Bailey) would provide important protections against the wrongful conviction of children in New York and our organizations writes this in strong support of this legislation.

One of the most counterintuitive aspects of human behavior is the decision to self-incriminate, and in particular, to do so falsely. While many understandably believe a false confession is anomalous, we have discovered through DNA-based exonerations that it is a frequent contributing factor to wrongful convictions. In fact, it is the most common contributing factor among homicide exonerations--and present in 30% of all exonerations--proven through DNA. Of those cases, 49% of the false confessors were 21 years old or younger at the time of the arrest.

The decision to falsely confess to a crime is perfectly rational given certain the circumstances of the interrogation. Through examination of the cases of exonerees, innocent people have been found to falsely confess for a range of reasons, including:

- Real or perceived intimidation by law enforcement;
- Compromised reasoning ability due to exhaustion, stress, hunger, substance use, and other factors;
- Legal, but deceptive interrogation tactics, such as law enforcement making untrue statements about the presence of incriminating evidence or their ability to provide leniency; and,
- Fear that refusing to confess will yield a harsher punishment.

These factors are even more intense when the person being interrogated is underage. One leading study of 125 proven false confession cases found that 63% of false confessors were under the age of twenty-five and 32% were under eighteen. Another respected study of 340 exonerations found that juveniles under the age of eighteen were three times as likely to falsely confess as adults. Leading law enforcement organizations, such as the International Association of Chiefs

of Police, also agree that children are particularly likely to give false confessions during the pressure-cooker of police interrogation.

In the notorious case of the Exonerated 5 in New York City, factually innocent children broke down and confessed after the police misrepresented that their friends and associates not only confessed but also implicated them in the crime. Troublingly, judges and juries uncritically believe confessions since, historically, it was nearly impossible to discern a true confession from a false one.

Juvenile False Confessions

While false confessions are not limited to children, their vulnerability demands better protection under New York law. Children do not have the mental maturity to judge the consequences of confessions in the way adults do – and yet, even adults are highly susceptible to the pressures that elicit false confessions. Children are more likely to focus on the immediate potential outcomes of making a false confession, such as going home, rather than the long-term legal implications. They may also be inclined to please authority and are more susceptible to leading questions, threats of punishment, and other forms of manipulation.

The Safety Risk of Wrongful Convictions

Often, opponents of reforms such as these raise the concern that these types of processes will harm their ability to identify the perpetrators in the most egregious cases. However, these arguments ignore the real harm caused by wrongful convictions and their implication for public safety.

The wrongfully convicted and their families suffer incalculable losses and trauma. Victims and their families do not receive justice and have to relive their trauma. Communities lose valuable members, continue to experience crimes committed by the real perpetrator, and lose already scarce trust in law enforcement. Further, it is in the most egregious cases that these types of protections are needed to avoid the ramifications of misidentification. Of the first 375 exonerations based on DNA evidence, the true perpetrators were subsequently detected in 50% of those cases. These 165 people committed an additional 154 violent crimes while an innocent person took their place in prison.

While reforms such as these may seem to put barriers in place to apprehending and prosecuting criminals, they in fact protect us against the mistakes that can cause wrongful convictions and leave our communities vulnerable. For these reasons, the Innocence Project supports **A. 5891B (Joyner) / S. 2800B (Bailey)**. This legislation will better protect children and lead to a safer New York.

Should you have any questions, please do not hesitate to contact Rebecca Brown at rbrown@innocenceproject.org.



New York State Defenders Association, Inc.

Public Defense Backup Center

194 Washington Ave. • Suite 500 • Albany, NY 12210-2314

Telephone (518) 465-3524

Fax (518) 465-3249

www.nysda.org

MEMORANDUM OF SUPPORT S. 2800-C (Bailey) & A. 5891-C (Joyner)

Requiring Consultation with Counsel Before Police Interrogate Children

NYSDA strongly supports the passage of the Right to Remain Silent Act, S.2800-C (Bailey) and A.5891-C (Joyner), which clarifies and protects the rights of children who are in police custody. When police determine interrogation is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement, so that any statement taken in violation of the rule would be not be admissible against the youth.

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This bill would amend the procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
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- Even if present, a parent or guardian may be unable to protect their child’s right to remain silent because they do not understand the right either, the stress of their child’s situation renders them unable to think clearly, or they have conflicting interests.

Ninety (90) percent of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth. Research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

Even when the police do everything right, a great risk exists because young people have a limited capacity to adequately appreciate what is at stake. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children are interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers and families are able to hire an attorney to advise the child. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

S.2800-C/A.5891-C would provide the needed protection. We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and to minimize the risk of harm arising from false confessions.

The New York State Defenders Association strongly supports passage of this bill.

For more information, contact Susan C. Bryant at 518-465-3524 or sbryant@nysda.org. (4/29/2022)



**Memorandum of Support for
Requiring Consultation with Counsel before Police Interrogate Children
A. 5891C (Joyner) / S. 2800C (Bailey)**

April 2022

Safe Horizon, the nation's largest nonprofit victim assistance organization, supports A.5891C/S.2800C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections. This legislation is needed to protect the legal rights of children suspected of committing a crime.

Safe Horizon supports commonsense criminal justice reforms, especially those that take into consideration child development and trauma. We offer a client-centered, trauma-informed response to 250,000 New Yorkers each year who have experienced violence or abuse. That includes children, adolescents, and adults. And we are increasingly using a lens of racial equity to guide our work with clients, with each other, and in developing the positions we hold. It is our understanding of trauma, healing, and youth development, as well as our commitment to antiracism, that led us to support this bill.

First, it's important to acknowledge that we do have concerns about this bill. Treatment and counseling for children exhibiting problematic sexual behaviors is often accessed through a criminal justice process. This must change, of course, but if children who cause harm are likely going to be extracted from police interrogations, that current existing path to treatment may be closed. Additionally, when law enforcement is unable to obtain statements from those suspected of causing harm, more pressure is placed on the victim of the crime in question whose statement is all law enforcement may have. We do not want to unintentionally harm victims and survivors of violence and abuse, especially children.

Over our decades of doing this work, we have learned all too well that the justice system was built for adults and not for children – children who have experienced harm, children who have caused harm, and children accused of crimes they may or may not have committed. Children suspected of committing a crime have legal rights, just as adults suspected of committing a crime have legal rights. This bill is essential because it ensures that these rights are protected even when children, and in many cases their parents, don't fully appreciate the meaning and significance of the right to remain silent or appreciate the almost certain repercussions of waiving that right.

Research demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. We fear that these children are also the very ones most likely to make a false confession and say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated.

Additionally, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive Miranda rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low-income communities, the protections of Miranda are not always fully realized.

Safe Horizon values the work of our law enforcement partners. We work side-by-side with law enforcement every day, including at our Child Advocacy Centers, and we know that many came to this work to serve, protect, and help people and communities, including kids. A.5891C/S.2800C is not intended to demonize law enforcement. While abuses may occur on a case-by-case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake even when the police do everything right.

A.5891C/S.2800C would provide much needed protection – the protection of rights that already exist but that children and their parents may not completely and fully understand and appreciate. Current law provides that police may interrogate a juvenile when it is necessary. This bill would still allow police to interrogate youth but would require that the youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s Miranda rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact:

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**NEW YORK
CITY BAR**

**REPORT ON LEGISLATION BY
THE JUVENILE JUSTICE COMMITTEE AND
THE CHILDREN AND THE LAW COMMITTEE**

**A.5891-C
S.2800-C**

**M. of A. Joyner
Sen. Bailey**

AN ACT to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement

THIS BILL IS APPROVED

I. INTRODUCTION

On behalf of the New York City Bar Association’s Juvenile Justice Committee and Children and the Law Committee, we write to express our support for legislation to protect children during custodial police interrogation, A.5891-C / S.2800-C.

The Juvenile Justice Committee is comprised of members from a range of entities involved in the criminal legal system for youth in both family court and adult criminal court, includes judges, prosecutors/the presentment agency, defense attorneys, researchers, policy advocates, the City’s Department of Probation, and the Administration for Children’s Services. The Children and the Law Committee addresses legal issues that impact upon the quality of life for children and families. The Committees strive to respect all perspectives within this complex system. The Committees recognize that youth affected by current police interrogation practices are overwhelmingly Black or Latinx. Black and Latinx youth comprise a substantially larger proportion of arrests than their proportion of the general population, and the State’s confinement settings are predominately filled with Black and Latinx youth. These disparities exist in both New York City and communities across the State and are evident within both the Youth Part and family court delinquency

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

proceedings.¹ We also recognize that the victims of crime are also disproportionately Black and Latinx.² Thus we analyze this and all legislation through a racial equity lens.

II. ISSUE / PROBLEMS WITH THE CURRENT STATE OF THE LAW

As recent successful reforms in New York’s youth justice system reflect, children are not the same as adults. Both socioemotional and neural development continue across childhood and into young adulthood, and brain regions responsible for decision making and for managing emotional or stressful situations are among the last to fully mature.³ As a result of their developmental immaturity, children and adolescents are more likely to act impulsively, make decisions based on emotion, and prioritize short-term rewards over long-term consequences.⁴ As a result, youth are uniquely vulnerable to making an unknowing, unintelligent, or involuntary waiver of their Miranda rights and of providing unreliable confessions.⁵

Research on adolescent development and youth interrogations emphasizes that, to understand and appreciate the meaning of their Miranda rights, youth need to be able to understand the plain meaning of the rights, hold the Miranda warnings in their minds while thinking through their options, understand the legal system sufficiently to anticipate what is likely to happen next, identify the short- and long-term benefits and risks of waiving or asserting their rights, and manage their emotions enough to make a reasoned choice.⁶ They must also resist pressure from police—and sometimes also from parents—to decide on the best course of action.⁷ However, decades of research makes clear that children and adolescents are developmentally unable to navigate each of

¹ See, e.g., Raise the Age Task Force Final Report (2020), at 6, <https://www.criminaljustice.ny.gov/crimnet/ojsa/FINAL%20Report-Raise%20the%20Age%20Task%20Force%202012-22-20.pdf> (all websites last visited April 28, 2022).

² See, e.g., NYPD, Crime and Enforcement Activity in New York City, (Jan. 1 – Dec. 31, 2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2020-enforcement-report.pdf.

³ Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64 (Jacqueline Bhabha ed., 2014). The United States Supreme Court has recognized and relied on these hallmarks of adolescent developmental immaturity in a number of decisions over the past 15 years. See *Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016); *Miller v. Alabama*, 567 U.S. 460, 471–72 (2012); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

⁴ Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 NATURE NEUROSCIENCE 1184, 1186 (2012); Dustin Albert & Laurence Steinberg, *Judgment and Decision Making in Adolescence*, 21 J. RES. ADOLESCENCE 211 (2011).

⁵ See generally Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018).

⁶ Naomi E.S. Goldstein et al., *Potential Impact of Juvenile Suspects’ Linguistic Abilities on Miranda Understanding and Appreciation*, in THE OXFORD HANDBOOK OF LANGUAGE AND LAW 299, 307 (Lawrence M. Solan & Peter M. Tiersma eds., 2012); Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 WIS. L. REV. 431, 431–432 (2006); Jessica Owen-Kostelnik et al., *Testimony & Interrogation of Minors: Assumptions about Maturity and Morality*, 61 AM. PSYCHOL. 286, 295 (2006); Jodi L. Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, & Psychological Symptoms*, 29 LAW & HUM. BEHAV. 723, 738–39 (2005).

⁷ Elizabeth Cauffman & Laurence Steinberg, *Emerging Findings from Research on Adolescent Development and Juvenile Justice*, 7 VICTIMS & OFFENDERS 428, 440 (2012).

these tasks in the same way that adults do, and so it is therefore unsurprising that the vast majority of children and adolescents waive their Miranda rights when asked to do so by police.⁸

Under current New York law, children and adolescents are expected to understand and exercise their rights on their own, despite research showing that, even under the best of circumstances, youth have difficulty with Miranda rights comprehension.⁹ Research demonstrates that 94 percent of justice-involved youth ages 12 to 19 fail to fully appreciate the import and function of Miranda rights.¹⁰ Young people hold serious misconceptions; for example, a majority of youth believe that, if they exercise their rights during interrogation, the judge will just make them talk later.¹¹ Young people's ability to understand their rights is likely even worse under the stress of interrogation.¹²

Once youth waive their Miranda rights, current law requires that police question them in designated spaces intended for juveniles, and only for a "reasonable" length of time, based on "the child's age, [and] the presence or absence of his parents or other persons legally responsible for his care."¹³ These provisions reflect the known vulnerability of children and adolescents during questioning. Nonetheless, police are still permitted to employ the same high-pressure interrogation techniques as are used with adults, including telling a youth that the police are on his or her side and misrepresenting evidence of the youth's guilt.¹⁴ This kind of treatment leads most young people who are interrogated to make incriminating statements.¹⁵ Because of heightened vulnerability due to developmental immaturity, youth confessions are less reliable than adult confessions: A large body of research shows that adolescents are at great risk of giving false confessions.¹⁶ These confessions, in turn, put youth at heightened risk for wrongful conviction, potential incarceration and all of the collateral consequences that a criminal conviction entail.

⁸ Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 429 (2013). About ninety percent of interrogated youth waive their rights. *Id.*

⁹ Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); McLachlan et al., *supra* note 159, at 170–72; Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008); Heather Zelle et al., *Juveniles' Miranda Comprehension: Understanding, Appreciation, and Totality of Circumstances Factors*, 39 LAW & HUM. BEHAV. 281, 287–88 (2015).

¹⁰ NAOMI E. S. GOLDSTEIN ET AL., *MIRANDA RIGHTS COMPREHENSION INSTRUMENTS* 93 (2014).

¹¹ Allison D. Redlich et al., *Pre-Adjudicative and Adjudicative Competence in Juveniles and Young Adults*, 21 BEHAV. SCI. & L. 393, 400–04 (2003).

¹² See Kyle C. Scherr & Stephanie Madon, *You Have the Right to Understand: The Deleterious Effect of Stress on Suspects' Ability to Comprehend Miranda*, 36 LAW & HUM. BEHAV. 275, 278–79 (2012).

¹³ F.C.A. §305.2.

¹⁴ Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 433 (2013).

¹⁵ *Id.*

¹⁶ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 944 (2004); Brandon L. Garrett, *Contaminated Confessions Revisited*, 101 VA. L. REV. 395, 400 (2015);

Young people who have contact with the criminal legal system are disproportionately poor, Black and Latinx, more likely to have a developmental disability, a mental health condition, and be disconnected from school. They are, by all accounts, among the most vulnerable youth in our communities. These young people are at even greater risk than youth as a whole for waiving rights they do not understand.¹⁷ Without extra legal protections in place, those who already face discrimination and disadvantage are the ones most likely to be unable to benefit from their constitutional rights in interrogation contexts.

Although research makes clear that youth, as a whole, are unable to effectively navigate interrogation on their own, police can question a child without a parent or guardian present. While New York's Raise the Age law calls for "immediate" parental notification prior to the waiver of Miranda rights, notification has been deemed "immediate" by police in New York City even if, in fact, significant time passes in police custody. This passage of time can result from the fact that the law requires only that "reasonable efforts to notify" a parent or guardian are made.¹⁸ In addition, police are not required to explain to the child and the child's parent or guardian what it is the police want to question the youth about, and police do not have to tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses. Notably, research shows that even when parents are present, they themselves often have serious misconceptions about Miranda rights.¹⁹ Even when parents do understand a youth's rights, they are often ill-equipped to serve in a protective capacity during interrogation, as research shows that parents themselves are vulnerable to police pressure and, most of the time, either encourage their children to confess or do not speak or participate at all.²⁰

It is important to consider the context of potential interrogation. Children under the age of 18 are subjected to the same conditions as adults with regard to pre-arraignment detention. In New York State, this may mean up to or exceeding 24 hours in custody subjected to interrogation,

Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 148–49 (2003); Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 LAW & HUM. BEHAV. 181, 186 (2014); Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018).

¹⁷ Lower academic engagement and achievement, higher suggestibility, lower socioeconomic status, and diagnosis with some mental health conditions are all associated with poorer understanding of Miranda rights. Kaitlyn McLachlan et al., *Examining the Role of Interrogative Suggestibility in Miranda Rights Comprehension in Adolescents*, 35 LAW & HUM. BEHAV. 165, 167 (2011); Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003); Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 690–94 (2008).

¹⁸ Fam. Court Act § 305.2(4).

¹⁹ Jennifer L. Woolard et al., *Examining Adolescents' and their Parents' Conceptual & Practical Knowledge of Police Interrogation: A Family Dyad Approach*, 37 J. YOUTH & ADOLESCENCE 685, 689 (2008). In one study of parents of justice-involved youth, a majority of parents believed youth had legal protections during interrogation that they actually do not have. *Id.*

²⁰ Jodi L. Viljoen et al., *Legal Decisions of Preadolescent and Adolescent Defendants: Predictors of Confessions, Pleas, Communication with Attorneys, and Appeals*, 29 LAW & HUM. BEHAV. 253, 261 (2005).

potentially without a parent or guardian present. In most cases, the entirety of this period is spent in police custody without access to legal counsel.

III. SUMMARY OF THE LEGISLATION

The proposed legislative amendment defines key terms in the current law and provides additional safeguards to protect the Constitutional rights of children. The amendment defines when the police must contact the youth's parent or guardian, and requires that a youth subjected to custodial interrogation first consult an attorney. The remedy for violation of the law would be suppression of any statement taken. The proposed revisions affect Article Three of the Family Court Act as well as the corresponding provisions of Article Seven of the Family Court Act and the Criminal Procedure Law addressing youth under 18 years old. The effect is to protect youth who may be subject to delinquency or Persons in Need of Supervision (PINS) proceedings in family court, or adult prosecution in criminal court.

As discussed above, police are required to Mirandize every child subjected to a custodial interrogation. The proposed amendment attempts to ensure that any waiver of those Miranda rights is knowing, intelligent and voluntary, as required by the U.S. Constitution. Currently, police must only read children their Miranda warnings and ask whether they understand and waive those rights. Attorney consultation aims to ensure that children have a full and true opportunity to understand the complex Constitutional rights they would be waiving before they do so. Requiring that youth in police custody consult with an attorney prior to waiving their Miranda rights, either in person, by telephone, or by video conference, responds directly to what we know about children's developmental limitations and poor decision making. This would require ensuring that attorneys are available to all youth in police custody state-wide.

As discussed above, under current law, if an officer takes a child into custody, the parent, or person legally responsible or person with whom the child resides, must be immediately notified.²¹ However, "immediate notification" is not defined in the existing law, leaving officers without guidance. The proposed legislation clarifies that the officer must notify the child's caretaker *before* that child can be taken from the scene of the arrest to the police precinct.²² This definition will assist police in complying with the law, reduce the amount of time a child is in custody without the support of a parent or other adult.

Under the proposed legislation, the police are not foreclosed from interrogating a juvenile when the child is not in custody. Youth are only entitled to Miranda warnings prior to a custodial interrogation. This legislation does not change the law defining custody. It does not affect non-custodial interrogations: those where a reasonable child would feel they are free to end the interrogation and leave. If, after consulting an attorney, a child wants to waive their Miranda rights, they can still do so. This legislative amendment aims only to ensure that such waiver is in fact knowing, voluntary and intelligent, as the Constitution requires. With the additional guidance and

²¹ F.C.A. §305.2(3).

²² The bill provides guidance about what an officer must do if he or she does not reasonably believe the parent or guardian will appear, e.g., F.C.A. §305.2(4)(b).

safeguards in the proposed amendment, children's Constitutional rights will be better protected and police will have better guidance on what the law requires of them.

While a majority of Committee members voted to support the bill, some members raised that requiring juveniles to speak with an attorney prior to police custodial interrogation might interfere with police investigations, hamper prosecutions and impact public safety. In examining the racial impact of the legislation, some members noted that a potential reduction in public safety impacts communities of color because they reflect the majority of crime victims. These are, of course, important considerations in any criminal justice reform. While the majority of the Committees support the bill as proposed, a concern was raised that the bill should only address access to counsel and equitable safeguards for all youth regarding their Fifth Amendment right against self-incrimination during custodial interrogations without addressing the related issue of when a child should be released to the custody of a parent or guardian.²³

IV. CONCLUSION

Our current interrogation law fails to protect children, despite their well-known vulnerabilities and recent legislative reforms that have recognized this fact and centered their developmental stage in approaches to public safety like Raise the Age. The effect of our current approach is disproportionately visited upon Black and Latinx youth. New York's youth justice system continues to be marked by deep racial and ethnic disparities from arrest to case resolution.

An attorney can assist youth in understanding their legal rights and the potential consequences of waiving those rights. Youth may have never experienced police questioning, yet interrogators are trained, experienced professionals. In this context it is difficult to imagine that an adolescent would be able to provide a knowing, intelligent and voluntary waiver in the absence of speaking with an attorney. The presence of a parent or guardian does not mitigate this concern. Current research casts serious doubt on the proposition that parents can effectively advocate for their children or function as substitutes for trained legal defense counsel. While the majority of the Committees' members support the bill as proposed, some members raised that, based on a survey of jurisdictions that have implemented similar safeguards for youth, ensuring necessary funding in support of this legislation is important to ensure that all youth are represented at the time of custodial interrogation and that conflict counsel²⁴ are available to assist youth and families in a meaningful way.

Finally, we do not accept that the current approach makes us safer. Crime victims are not served by a policy that produces such a high risk for false information, which can derail legitimate investigative practice and permit those who are responsible for offenses to escape consequences. Balancing the individual and system impacts of the legislation from a number of positions within

²³ Specifically, a concern was raised that the bill's proposed changes to Subdivision 5 and 6 of section 305.2 of the family court act would require the release of youth alleged to have committed crimes other than designated felonies in the absence of special circumstances. The language at issue is identical to the current law governing release when family court is not in session. Neither the current law nor the bill defines special circumstances in this context.

²⁴ Here, 'conflict counsel' refers to attorneys who are unaffiliated with counsel for a co-respondent or co-defendant. This might occur where there are two youth charged, and the same counsel cannot represent both as clients because of conflicts of interest in the representation.

juvenile and adult criminal justice system, the Committees support the proposed legislation and urge its enactment.

Juvenile Justice Committee
Maura Keating and Jennifer Ruiz, Co-Chairs

Children and the Law Committee
Melissa J. Friedman and Rachel Stanton, Co-Chairs

Reissued April 2022

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May 3, 2022

Members of the New York State Senate Finance Committee
LOB 630
Albany, NY 12248

**Memo of Support for
Requiring Consultation with Counsel before Police Interrogate Children
(S.2800-B - Bailey / A.5891-C - Joyner)**

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why A Little Piece of Light supports S.2800-B/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

A Little Piece of Light (ALPOL) seeks to empower and facilitate healing for women, girls, and gender-fluid individuals who are directly impacted by trauma and involvement in the criminal justice system. Led by formerly incarcerated individuals and their family members, ALPOL organizes to mobilize leaders and help heal our collective trauma incited by racism, sexism, violence, poverty, and the criminal justice system.

Criminalizing children is the antithesis of what A Little Piece of Light stands for.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child’s parent or guardian what it is the police want to question the youth about.

- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child's right to remain silent because they do not understand the right either, the stress of their child's situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in "When They See Us" were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800-B/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact: Imani Webb-Smith, JD, Director of Policy and Advocacy at imani@alittlepieceoflight.org or 917-652-6424.

Sincerely,

Imani Webb-Smith, JD
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917-652-6424

**#RIGHT2REMAIN
SILENT**

Memo of Support for Requiring Consultation with Counsel before Police Interrogate Children (S.2800-B - Bailey / A.5891-C - Joyner)

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California and the state of Washington have passed laws to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why Yazmine Nichols supports S.2800-B/A.5891-C, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Yazmine Nichols is an attorney in New York State.

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Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children

are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800-B/A.5891-C is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800-B/A.5891-C would provide the needed protection. When police determine that interrogation of a child is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact: Yazmine Nichols, Esquire at yazmine.nichols@gmail.com.

Sincerely,
Yazmine Nichols
Attorney

The logo features a large orange hashtag symbol (#) on the left. To its right, the words "RIGHT2REMAIN" and "SILENT" are stacked vertically in a bold, blue, sans-serif font. The "2" in "RIGHT2REMAIN" is smaller than the other characters.



The Legal Aid Society
— of ROCHESTER, NEW YORK —

May 2, 2022

Dear Senate Majority Leader Stewart-Cousins and Speaker Heastie:

**Re: A.5891-C (Joyner) / S.2800-C (Bailey)
Protections for Children During Custodial Interrogation**

We urge the State Legislature to pass A.5891-C/S.2800-C. This important bill will safeguard New York's youth by ensuring that when police take a young person under 18 into custody, the police may engage in questioning only after the youth has consulted with an attorney. Failure of law enforcement to comply with this condition would mean that any statement made could not be used against the youth in a delinquency or criminal proceeding. The legislation would address the disparity between youth from low income Black and Brown communities, who are disproportionately arrested,¹ and their more affluent counterparts, whose families can afford to and invariably do hire attorneys to appear *at police precincts* to invoke their clients' rights to remain silent. Youth who are assigned public defenders when they appear in court lack this critical protection.

Decades of research in basic and applied psychology and developmental neuroscience, including studies focused specifically on juvenile interrogations, make clear that adolescents are systematically and severely disadvantaged during police interrogations compared to adult suspects. The disadvantages manifest in several key areas, including *Miranda* comprehension and waiver, susceptibility to influence and coercion, and vulnerability to false confessions. Adolescents often misunderstand words and phrases commonly found in *Miranda* warnings and even those who do cognitively comprehend *Miranda* language struggle to understand the implications of waiving their *Miranda* rights.² These limitations are exacerbated by both the inherently stressful nature of a custodial interrogation and the techniques developed by law enforcement to minimize the significance of the *Miranda* transaction or dismiss waiver procedures as a mere bureaucratic formality. Adolescents are more susceptible to negative feedback from interrogators³ and more likely to comply with requests from authority figures and efforts to induce them to simply confirm the police version of events. They have incomplete or inaccurate information about police interrogation practices; for example, few adolescents (or their parents) know that police are permitted to and frequently do lie during interrogations.⁴ Furthermore, justice-involved adolescents are more likely to have intellectual disabilities and/or cognitive delays compared to other

¹ See, e.g., https://www1.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2019-enforcement-report.pdf.

² Goldstein, N. E. S., Kelly, S. M., Peterson, L., Brogan, L., Zelle, H., & Romaine, C. R. (2015), Evaluation of *Miranda* waiver capacity, in K. Heilbrun, D. DeMatteo, & N. E. S. Goldstein (Eds.), *APA handbook of psychology and juvenile justice* (pp. 467- 488). Washington, DC: American Psychological Association.

³ Richardson, G., & Kelly, T. P. (2004), A study in the relationship between interrogative suggestibility, compliance and social desirability in institutionalized adolescents, *Personality and Individual Differences*, 36, 485-494.

⁴ Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008), Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence*, 37(6), 685-698.

Carla M. Palumbo, Esq., President & CEO

adolescents.⁵ Research demonstrates that even when the police carefully communicate the *Miranda* rights using simplified language, adolescents lack capacity to make waiver decisions that are knowing, voluntary and intelligent.⁶

Additionally, it is well documented that adolescents are especially vulnerable to falsely confessing.⁷ Adolescents are prone to saying whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The resulting false confessions in turn pave the way toward wrongful convictions. Indeed, adolescents are overrepresented in studies of documented false convictions.⁸

The presence of parents does not reduce false confessions or aid most adolescents in making prudent decisions about whether to waive their rights.⁹ There are too many factors for a parent to wrestle with – including the stress of having a child in police custody -- for them to be relied upon to provide the necessary perspective and support their child needs. Furthermore, parents often find themselves and their interests in conflict with the interests of their children. Nor is there any assurance that a parent understands all of the considerations inherent in the right to remain silent any better than their child does.

The vast majority of adolescents waive their *Miranda* rights and submit to police questioning without an attorney present. Because of the over-policing of communities of color, the adolescents in those communities are disproportionately deprived of their constitutional right to remain silent. This bill promotes evidence-based solutions to many of the problems inherent in juvenile interrogations and would ensure that no adolescent in New York ever waives this fundamental right without first consulting with an attorney. This bill offers New York an opportunity to address racial disproportionality and set a national standard in implementing needed protections for juveniles in interactions with law enforcement. We therefore urge the Legislature to pass A.5891-C/S.2800-C.

Very truly yours,



Carla M. Palumbo, Esq.
President & CEO

⁵ Kazdin, A. E. (2000). Adolescent development, mental disorders, and decision making of delinquent youths, in T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: a developmental perspective on juvenile justice* (pp. 33-65), Chicago: University of Chicago Press.

⁶ Cleary, H. M. D., & Vidal, S. (2016), *Miranda in actual juvenile interrogations: Delivery, waiver, and readability*. *Criminal Justice Review*, 41(1), 98-115.

⁷ Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010), Police-induced confessions: Risk factors and recommendations, *Law and Human Behavior*, 34(1), 3-38. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. Rev. 891 (2004).

⁸ See Lindsey C. Malloy, et al., Interrogations, confessions, and guilty pleas among serious adolescent offenders, in 38 *L. & Hum. Behav.* 181 (2014).

⁹ Scientist Action and Advocacy Network, *Scientific Support for a Developmentally Informed Approach to Miranda Rights* (2018).

cc: Governor Kathy Hochul; Senator Jamaal Bailey; Assembly Member Latoya Joyner



To: Senator Jamaal T. Bailey and Assembly Member Latoya Joyner, Sponsors
Date: April 28, 2022
Re: Memorandum in Support of A.5891-C/S.2800-C

The Gault Center (formerly the National Juvenile Defender Center) offers its strong support of A.5891-C/S.2800-C, “An act to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement,” which aims to protect children’s right to counsel by requiring that children be afforded the opportunity to consult with legal counsel prior to any questioning by law enforcement and before waiving any *Miranda* rights.

The Gault Center is a nonprofit organization dedicated to promoting justice for all children by ensuring excellence in youth defense. The Gault Center has worked for 25 years to strengthen children’s legal protections and access to counsel, through youth defense assessments, training, technical assistance, and policy reform efforts in every state. We strongly support children’s right to counsel at interrogation.¹

Requiring access to and consultation with counsel prior to questioning by law enforcement upholds children’s constitutional right to counsel and ensures the integrity of investigations involving children. Developmental research and United States Supreme Court precedent support that children are more susceptible to interrogation tactics than adults.² As long ago as 1948, the Supreme Court asserted, “we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.”³

More recently, the Supreme Court held that age informs the *Miranda* analysis for custodial interrogations because children subjected to police questioning often feel more pressured to comply with authority than adults.⁴ The Supreme Court explained, “By its very nature, custodial police interrogation entails ‘inherently compelling pressures.’ Even for an adult, the physical and psychological isolation of custodial interrogation can ‘undermine the individual’s will to resist and . . . compel him to speak where he would not otherwise do so freely.’”⁵

¹ *E.g.*, NAT’L JUVENILE DEFENDER CTR., ENSURING ACCESS: A POLICY ADVOCACY TOOLKIT (2018), at 22-24; NAT’L JUVENILE DEFENDER CTR., SPECIAL CAUTION REQUIRED: THE REALITIES OF YOUTH INTERROGATION (2019).

² *Haley v. Ohio*, 332 U.S. 596, 599–600 (1948); *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011).

³ *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948).

⁴ *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011).

⁵ *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

By providing children with an opportunity to consult with counsel before police questioning, this legislation would assist children in understanding their *Miranda* rights and the legal process before they are subject to “the overpowering presence of the law.”⁶ In the absence of counsel, almost 90 percent of children waive their *Miranda* rights, with few children understanding the rights they are waiving.⁷ This leaves children literally defenseless in the face of trained professionals seeking to secure confessions.

Nearly 55 years ago, the Supreme Court recognized the critical importance of access to counsel for children and noted, “[I]t is necessary that ‘Counsel be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent.’”⁸

The proposed legislation provides important safeguards for youth: it helps ensure they have a full and meaningful understanding of their *Miranda* rights—and, importantly, the consequences of waiving them—by being able to discuss them with a lawyer dedicated to their interests; it guards against false confessions; and it will ultimately help to minimize wrongful convictions.⁹

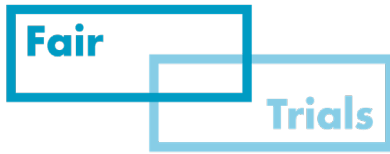
For these reasons, The Gault Center urges the New York State Legislature to pass this bill and support children’s constitutional right to counsel.

⁶ *Haley v. Ohio*, 332 U.S. 596, 600 (1948).

⁷ Barry Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & SOC’Y REV. 1, 12 (2013) (finding, in a study of 307 young people ages 16 through 18, 92.8 percent of those young people waived their *Miranda* rights); Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1153 (1980) (finding, in a study of 431 youth, only 20.9 percent of those youth adequately understood all four *Miranda* rights).

⁸ *In re Gault*, 387 U.S. 1, 38 (1967).

⁹ Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 L. & HUM. BEHAV. 181, 182 (2014).



March 11, 2022

Re: Assembly Bill #A5892-b (“An act to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement”)

Dear Speaker Heastie,

I write to you today as Legal Director for Fair Trials Americas, the Washington D.C. based office of the international human rights organization Fair Trials International.¹ I write to urge your support for #A5892-b (“An act to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement”). As New York looks for meaningful ways to amend the Family Court Act and Criminal Procedure Code, providing youth the ability to consult with an attorney before they are “Mirandized” and questioned plays a vital role for youth in the perilous first hours post-arrest. In doing so, New York would join a growing movement of states, countries and municipalities that are implementing increased protections and access to counsel during this critical time period.

About Fair Trials: Fair Trials is an international criminal justice reform organization with offices in London, Brussels, and Washington, D.C. Fair Trials works to improve rights protection in criminal legal systems around the world with reference to international standards and comparative best practice. For the past 20 years, Fair Trials has worked in Europe and globally to develop and implement improved procedural rights standards, including the right to counsel in police custody, improved notification of rights for people in custody (orally and in writing), improved access to disclosure of evidence prior to interrogation, and increased safeguards for children in conflict with the law. Our report, *Station House Counsel: Shifting the Balance of Power Between Citizen and State*, highlights the urgency of providing early access to counsel for the most vulnerable.²

Through our cross-regional learning program, “the Transatlantic Bridge,” Fair Trials is seeking to support U.S. jurisdictions looking to improve protections for people in custody by providing them with information and expertise from international jurisdictions where access to counsel in custody is well established. We are currently engaged in an evaluation (in partnership with

¹ <https://www.fairtrials.org/>

² *Station House Counsel: Shifting the Balance of Power Between Citizen and State*, Fair Trials (October 2020), available at <https://www.fairtrials.org/articles/publications/station-house-counsel/>.

Urban Institute and the University of Chicago) of the implementation of SB 203 in California,³ a law that similarly seeks to connect arrested youth with counsel prior to interrogation. We also advocated for the inclusion of similar language in D.C.’s recent police reform bill.⁴

As Legal Director, I also served on a steering committee tasked with drafting the Mendez Principles, an international protocol on non-coercive police interviews,⁵ which was led by former U.N. Special Rapporteur on Torture, Juan Mendez. The steering committee consisted of 15 international experts in interrogation strategies, including psychology researchers, investigators, and procedural rights experts like myself. “The Principles on Effective Interviewing for Investigations and Information Gathering”⁶ were designed based on the latest international scientific evidence on effective interview techniques. The Mendez Principles are currently being considered for adoption by the United Nations.⁷

Background: Nationally, children only account for about 8.5% of arrests, but account for about one-third of false confessions,⁸ leading to a high rate of wrongful convictions.⁹ Because children’s cognitive abilities are still developing, most children cannot meaningfully understand their *Miranda* rights.¹⁰ Research has demonstrated that only 20% of youth adequately understand their *Miranda* rights; aspects of which, research suggests, requires a college or graduate level reading ability to comprehend.¹¹ Comprehension is further compromised by the fact that as many as 85% of youth in the juvenile justice system have disabilities that are likely to interfere with their ability to understand the *Miranda* doctrine and to withstand police pressure to waive fundamental rights to silence and to counsel, especially when isolated from family or any other means of emotional support in police custody.¹² Apart from comprehension, children are also frequently unable to invoke their rights in the particularly stressful situation of police custody. Youths face not only the power differentials

³ Text available at <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml>.

⁴ Text available at <https://code.dccouncil.us/us/dc/council/acts/23-336>.

⁵ Text available at https://www.apr.ch/sites/default/files/publications/apr_PoEI_EN_08.pdf.

⁶ *The Principles on Effective Interviewing for Investigations and Information Gathering* (May 2021), available at <https://interviewingprinciples.com/>.

⁷ Juan Mendez and Vanessa Drummond, *The Mendez Principles: A New Standard for Effective Interviewing by Police and Others, While Respecting Human Rights*, Just Security (June 1, 2021), available at <https://www.justsecurity.org/76711/the-mendez-principles-a-new-standard-for-effective-interviewing-by-police-and-others-while-respecting-human-rights/>.

⁸ Kevin Lapp, *Taking Back Juvenile Confessions*, 64 UCLA L. REV. 902, 920 (2017).

⁹ Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 920 (2004).

¹⁰ Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1152-53 (1980) (finding, in a study of 431 youth, only 20.9 percent of those youths adequately understood all four *Miranda* rights).

¹¹ Anthony J. Domanico et al., *Overcoming Miranda: A Content Analysis of the Miranda Portion of Police Interrogations*, 49 IDAHO L. REV. 1, 3 (2012).

¹² Taryn VanderPyl, *The Intersection of Disproportionality in Face, Disability, and Juvenile Justice*, 15 JUST. POL’Y J. 1, 2(2018).

inherent to all interrogation but also the effect of being raised to respect and obey adults. They are also more likely to be influenced by deceptive methods and short-term incentives (i.e., being told they can go home if they say “what happened”).¹³ Accordingly, on a national basis about 90% of arrested youth waive their right to counsel.¹⁴

Notwithstanding all of the well-known information about the way that children behave and comprehend in police custody, under current New York law children are not adequately informed of their rights in a manner consistent with their cognitive capacity.

National and global movement toward station house counsel, especially for youth: Adoption of # A5892-b would place New York within a growing movement of jurisdictions both within the United States and around the world that increasingly recognizes the benefits of providing early access to counsel during police custody, prior to interrogation and as a necessary precursor to any effective waiver of the right to silence.

Several states and jurisdictions mandate counsel for younger children in custody (for example, up to age 15), but increasingly, states are beginning to expand access to older children, up to the age of 18. These reforms are being embraced by all actors in the justice system, including prosecutors.¹⁵ In addition to New York, nine states are currently considering such legislation including in Colorado,¹⁶ DC,¹⁷ Hawaii,¹⁸ Illinois,¹⁹ Massachusetts,²⁰ Minnesota,²¹ Missouri,²² South Carolina,²³ and Virginia.²⁴

¹³ *Access Denied: A National Snapshot of States’ Failures to Protect Juveniles’ Access to Counsel* (May 2017) https://njdc.info/wp-content/uploads/2017/05/Snapshot-Final_single-4.pdf

¹⁴ Lorelei Laird, *Police Routinely Read Juveniles their Miranda Rights, But Do Kids Really Understand Them?*, American Bar Association (2016), available at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/august-2016/police-routinely-read-juveniles-their-miranda-rights--but-do-kid/.

¹⁵ *Youth Interrogation: Key Principles and Policy Recommendations*, Fair and Just Prosecution, Issues at a Glance Brief, available at https://fairandjustprosecution.org/wp-content/uploads/2022/01/FJP-Juvenile-Interrogation-Issue-Brief.pdf?fbclid=IwAR2mnh101J67Q3APWC37_BM7v5U8xwSmlA4k_1ClloIyA9jUgwvrN_XaySI.

¹⁶ Text available at <https://leg.colorado.gov/bills/sb22-023>.

¹⁷ Text available at <https://trackbill.com/bill/district-of-columbia-bill-306-youth-rights-amendment-act-of-2021/2134425/>.

¹⁸ Text available at https://www.capitol.hawaii.gov/session2021/bills/HB419_.HTM.

¹⁹ Text available at <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=SB&DocNum=1827&GAID=16&LegID=134480&SpecSess=&Session=>

²⁰ Text available at <https://malegislature.gov/Bills/192/S90>.

²¹ Text available at https://www.revisor.mn.gov/bills/text.php?number=HF2749&session=ls92&version=list&session_number=0&session_year=2022&keyword_type=all&keyword=interrogation.

²² Text available at <https://www.house.mo.gov/bill.aspx?bill=HB2330&year=2022&code=R>.

²³ Text available at https://www.scstatehouse.gov/sess124_2021-2022/bills/53.htm.

²⁴ Text available at <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB746>.

Three states, including Utah,²⁵ Washington²⁶ and California,²⁷ have already enacted legislation. The most significant is the recent implementation (as of January 1, 2021) of SB 203²⁸ in California, which requires that youth have the opportunity to consult with counsel prior to waiving the right to silence. A similar law also was enacted in Washington state.²⁹ In Chicago, pursuant to Illinois state law³⁰ and the terms of a consent decree³¹ (meant to address, in part, police torture of people held in Chicago police custody), both arrested children and adults have the right to access counsel in person upon arrest, during police custody and prior to interrogation.

These states join dozens of other global jurisdictions, including every member state of the European Union, the United Kingdom, Canada, Australia and New Zealand in providing access to counsel for people who are arrested at any age. In many of these countries, counsel for youth in custody is not only available, but mandatory (non-waivable), as is the presence of an additional adult to provide support for the child. Around the world, police station access to counsel is understood to be a key safeguard against police abuse, arbitrary detention, insufficient notification of rights, unlawful arrest, lack of access to medical care and sanitation, coercive interrogation, and excessive prosecutions.³² In each of these jurisdictions police are able to conduct effective investigations alongside defense counsel in custody, proving that access to counsel for arrested people does not frustrate legitimate police aims.

Other jurisdictions can also provide models for more effective notification of rights for youth in police custody. Alongside the presence of defense counsel, many jurisdictions with stronger procedural rights for arrested people have developed “easy read,” simple and visual representations of custody rights, to help children better understand the consequences of waiver. This kind of effective, written notifications of rights go far beyond current Miranda warnings, which are poorly understood by children in particular.

Impact beyond interrogation: When lawyers are able to attend to arrested people in custody, the benefits of counsel expand beyond better protection of the right to silence. Lawyers in

²⁵ Text available at <https://le.utah.gov/~2021/bills/static/HB0158.html>.

²⁶ Text available at <https://app.leg.wa.gov/billsummary?BillNumber=1140&Year=2021&Initiative=false>.

²⁷ Text available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203.

²⁸ Text available at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB203.

²⁹ Text available at:

<https://app.leg.wa.gov/billsummary?BillNumber=1140&Year=2021&Initiative=false#documentSection>

³⁰ Text available at: <https://ilga.gov/legislation/ilcs/documents/072500050K103-4.htm>.

³¹ More information on the terms of the consent decree available at <https://chicagopoliceconsentdecree.org/>.

³² *Access and Contact with a Lawyer*, Association for the Prevention of Torture, available at: https://www.ap.t.ch/en/dfd_print/636/analysis/en.

police custody can bring oversight and intervention to police custody spaces that are currently immune from oversight. They can also provide procedural protections beyond the interrogation by preparing for bail hearings, identifying unlawful arrests, excessive charging, excessive use of force, and identifying people who could be diverted from prosecution. The zealous advocacy of counsel in the critical hours immediately post-arrest can have both upstream effects (on the behavior and arrest patterns of police officers) as well as downstream effects (on the course and outcome of charging, diversion, pre-trial detention, and ultimate case outcomes). The effects of advocacy at this early stage in proceedings can also result in considerable cost savings. A study of Cook County's early representation programs estimated that cost savings associated with early access to a lawyer could range between 12 and 43 million dollars.³³ Cost savings were realized through reduced jail time (both pre-trial and post-adjudication), reduced recidivism, and reduced liability pay-outs due to police misconduct effectively prevented by counsel. Existing research on early access to counsel has demonstrated lower rates and duration of pre-trial detention, higher probability of a reduction in charges, higher probability of release from detention and reduced jail admissions when lawyers can quickly access arrested people.³⁴

Enforcement, Monitoring and Evaluation: To properly evaluate whether, once adopted, #A5892-b has the desired effect of reducing coercive interrogations and coerced waivers of rights by children who have been arrested, data should be collected as to whether children are being given counsel, and whether that counsel results in improved police practice and invocation of rights by arrested children. Fair Trials is currently engaged in an implementation evaluation of California bill SB 203 and would be happy to advise stakeholders in New York on how to best track its implementation and effectiveness and to evaluate whether further legislation might be necessary to achieve its aims.

Conclusion: # A5892-b provides the opportunity to join the vanguard of rights protection for children in conflict with the law, to increase trust in police and the justice system and to prevent wrongful convictions for children, and to give new life to the lost promise of *Miranda*. Fair Trials urges its swift passage and implementation and congratulates the Assembly on its consideration of this important human rights instrument.

³³ Brian Sykes et. al., *The Fiscal Savings of Accessing the Right to Counsel Within 24 Hours After Arrest*, UC Irvine L. REV. (2015). Available at: <https://www.law.uci.edu/lawreview/vol15/no4/Sykes.pdf>.

³⁴ Worden et.al., *Early Intervention by Counsel*, Office of Justice Programs, NCJRS (April 2020), available at: <https://www.ojp.gov/pdffiles1/nij/grants/254620.pdf>.

Thank you for your consideration. I am available to provide any further information that may assist you.

Kind regards,

Rebecca Shaeffer

Rebecca Shaeffer
Legal Director, Fair Trials (Americas)



GEORGE GASCÓN
LOS ANGELES COUNTY DISTRICT ATTORNEY

HALL OF JUSTICE
211 WEST TEMPLE STREET, SUITE 1200 LOS ANGELES, CA 90012-3205 (213) 974-3500

February 07, 2022

Honorable Senate Majority Leader Stewart-Cousins and Speaker Heastie:

Re: A.5891-B (Joyner) / S.2800-B (Bailey)
Protections for Children During Custodial Interrogation

I am the District Attorney of Los Angeles, California, and writing this letter in support of A.5891-B/S.2800-B. This important bill would protect New York children under 18 who are in police custody by making sure they understand their rights before deciding whether to give them up. The bill ensures that police may engage in questioning only after a youth has consulted with an attorney. Failure of law enforcement to comply would mean that any statement made could not be used against the youth in a delinquency or criminal proceeding.

Establishing this protection is essential for a number of reasons. First, young people are still developing both neurologically and socially. Research has shown that adolescents often do not understand their *Miranda* rights and the consequences of waiving them. In addition, adolescents are prone to saying whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated, which leads to significantly higher rates of false confessions among children than among adults.

Second, the significant power differential between youth and police officers makes it difficult for young people to assert their rights, or knowingly and voluntarily waive them. This power differential is especially apparent for Black and Hispanic/Latinx youths in police custody. Without mandatory protections, many adolescents waive their *Miranda* rights and submit to police questioning without first speaking to counsel. And because there is more policing in communities of color, teens in those communities are disproportionately deprived of the constitutional right to remain silent. This legislation would address the disparity between youth from low income Black and Hispanic/Latinx communities who are disproportionately arrested and prosecuted, and their more affluent counterparts whose families can afford to hire attorneys to provide representation before interrogation.

Third, ensuring that youth understand their rights guarantees that we are upholding the Constitution. California has already enacted legislation (SB 203) that addresses these concerns. In my experience, the California statute has not undermined our ability to prosecute crimes. We rely less and less on confessions because technology -- including video surveillance and more sophisticated forensic evidence such as DNA -- has expanded our law enforcement options. Furthermore, we believe that ensuring Constitutional protections is more important than blind focus on securing statements. Another potential benefit of this bill is improvement in police-community relations, as it lessens the impression of some that police do not care about young people's rights, since protocols require police to connect an accused young person to a lawyer.

Requiring consultation with an attorney before the right to remain silent can be waived ensures that any such waiver will meet the constitutional standard of being knowing, intelligent and voluntary. As a result, this bill offers New York an opportunity to address racial disproportionality and set a national standard in implementing needed protections for youth in interactions with law enforcement. I therefore urge the Legislature to pass A.5891-B/S.2800-B.

Very truly yours,



George Gascon
District Attorney



Memo of Support for Requiring Consultation with Counsel before Police Interrogate Children (S.2800 - Bailey / A.5891 - Joyner)

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California recently passed a law (SB 203) to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why the Latino Pastoral Action Center supports S.2800/A.5891, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child’s parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child’s right to remain silent because they do not understand the right either, the stress of their child’s situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often.



Bishop Raymond Rivera
Founder & President

Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800/A.5891 is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800/A.5891 would provide the needed protection. Current law provides that police may interrogate a child when it is necessary. This bill would clarify that interrogation of a child is necessary only when the life and safety of the subject child or another person is in danger. When police determine interrogation is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waiveable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children's *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact:

Bishop Raymond Rivera at (646) 243-7811 or revrayrivera@gmail.com. Thank you.

Sincerely,

Bishop Raymond Rivera

President

#RIGHT2REMAIN
SILENT



**Memo of Support for
Requiring Consultation with Counsel before Police Interrogate Children
(S.2800 - Bailey / A.5891 - Joyner)**

The Netflix series “When They See Us”—a drama based on the prosecution of five innocent teens for a crime they did not commit—demonstrates the many ways in which the law fails to protect the rights of children when police seek to interrogate them. It has now been over three decades since the five teenagers were wrongly prosecuted. **Still, New York law continues to fail to protect children under the age of 18.** California recently passed a law (SB 203) to protect children in police custody by requiring a consultation with an attorney before a child may waive *Miranda* rights or be interrogated. New York State should afford children similar procedural safeguards. This is why Drama Club supports S.2800/A.5891, which amends procedures required for the custodial interrogation of children and for taking juveniles into custody to provide additional protections.

Drama Club is an innovative non-profit organization that provides theatre programming and positive mentorship to young people who are incarcerated or court-involved in New York City. Our mission is to consistently care for youth—including incarcerated and court involved—by creating space for them to discover, express, explore and have fun, with improv as their guide.

Under current New York law:

- Police are allowed to interrogate a child without a parent or guardian present.
- Police can lie to a youth in order to induce that youth to waive their right to remain silent.
- Police are not required to allow a child to meet and talk with their parent or guardian before the police read the child their *Miranda* rights.
- Police are not required to explain to the child and the child’s parent or guardian what it is the police want to question the youth about.
- Police do not tell the child, parent and/or guardian that the child can stop answering questions any time the child chooses.
- Even if present, a parent or guardian may be unable to protect their child’s right to remain silent because they do not understand the right either, the stress of their child’s situation renders them unable to think clearly, or they have conflicting interests.

90% of youth waive their *Miranda* rights. Thirty years of research by psychologists, sociologists, and neurologists make it clear that even under controlled circumstances, children lack the capacity to fully appreciate the meaning and significance of the right to remain silent, and to appreciate the almost certain repercussions of waiving that right. Add to that the stress and tension inherent in a custodial interrogation, and the prospect of an intelligent and voluntary waiver of the right to remain silent becomes a myth.

Research also demonstrates that the young people most likely to come into contact with law enforcement are those with the most limited capacity to understand their rights. While false confessions are just the tip of the iceberg when it comes to *Miranda* waivers, these are the same children who are most likely to say whatever they think will most immediately relieve them from the stress and pressure they are exposed to when being interrogated. The Exonerated Five highlighted in “When They See Us” were not an isolated case, but rather an example of what happens all too often. Empirical research also tells us that children are significantly more likely than adults to falsely confess to a crime, and that the presence of a parent or guardian does not result in fewer waivers of *Miranda* rights.

S.2800/A.5891 is not intended to demonize law enforcement. While abuses may occur on a case by case basis, the greatest risk comes from the limited capacity of young people to adequately appreciate what is at stake *even when the police do everything right*. On top of this, we know that the children most likely to come into contact with law enforcement and the juvenile legal system are African-American and Latinx children from over-surveilled schools and communities. The result is a disproportionate number of Black and Latinx children interrogated by police without an attorney to help them decide whether to waive *Miranda* rights while their more affluent peers are protected by hired attorneys. For Black and Latinx children from low income communities, the protections of *Miranda* are illusory.

The Proposed Legislation

S.2800/A.5891 would provide the needed protection. Current law provides that police may interrogate a child when it is necessary. This bill would clarify that interrogation of a child is necessary only when the life and safety of the subject child or another person is in danger. When police determine interrogation is necessary, this bill would require that a youth first consult with counsel before any questioning can take place. Consultation with counsel would be a non-waivable requirement that would exclude any statement taken in violation of the rule from being entered into evidence against the youth.

We call on the New York State Legislature to pass this critical piece of legislation to ensure that children’s *Miranda* rights are protected and minimize the risk of harm arising from false confessions.

For more information, please contact: Ashley Hart Adams at ashley@dramaclubnyc.org

Sincerely,

Ashley Hart Adams
Advocacy Program Coordinator
Drama Club





New York University
A private university in the public service

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April 6, 2021

Senator Jamaal T. Bailey
Legislative Office Building
Room 609
Albany, NY 12247

Dear Senator Bailey,

We are writing to express our very strong support for S2800/A5891, the proposal to amend the New York Family Court Act's requirements for custodial interrogation of children.

The two of us are NYU Law School professors who specialize in the field of juvenile justice. We believe that the reforms that would be made by the proposed legislation are absolutely essential and long overdue.

Empirical evidence on false confessions shows that a disproportionately high percentage of documented instances of false confessions involve juvenile suspects. *See, e.g.,* Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 941-43 (2004); Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257 (2007); Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 8-9, 19, 30-31 (2010); Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943 (2010); Joshua A. Tepfer, Laura H. Nirider & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 904-08 (2010).

The U.S. Supreme Court recognized the severity of this problem in *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011). The Court stated: “[T]he pressure of custodial interrogation is so immense that it ‘can induce a frighteningly high percentage of people to confess to crimes they never committed.’ *Corley v. United States*, 556 U.S. 303, 321 (2009) (citing Drizin & Leo, . . . [*supra*]); see also *Miranda*, 384 U.S., at 455, n. 23. . . . That risk is all the more troubling – and recent studies suggest, all the more acute – when the subject of custodial interrogation is a juvenile. See Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae 21–22 (collecting empirical studies that ‘illustrate the heightened risk of false confessions from youth’).”).

Former Chief Judge Jonathan Lippman of the New York Court of Appeals also warned against the very high risk of false confessions by juveniles. He said: “So long as juveniles cannot be altogether preserved from rigors of police interrogation, it would behoove us not to minimize the now well-documented potential for false confessions when suggestible and often impulsive and impaired children are ushered into the police interview room.”; “Children do resort to falsehood to alleviate discomfort and satisfy the expectations of those in authority, and, in so doing, often neglect to consider the serious and lasting consequences of their election. There are developmental reasons for this behavior which we ignore at the peril of the truth-seeking process.” *In the Matter of Jimmy D.*, 15 N.Y.3d 417, 431, 938 N.E.2d 970, 979, 912 N.Y.S.2d 537, 546 (2010) (Lippman, C.J., dissenting).

In addition, the empirical data also shows that most juveniles – simply by reason of their age and limited education – are incapable of comprehending *Miranda* warnings and making a knowing, intelligent, and voluntary decision to make a statement to the police. *See, e.g.*, THOMAS GRISSO, JUVENILES’ WAIVER OF RIGHTS: LEGAL AND PSYCHOLOGICAL COMPETENCE (1981) [hereafter Grisso I]; Rona Abramovitch, Karen Higgins-Bass & Stephen Bliss, *Young Persons’ Comprehension of Waivers in Criminal Proceedings*, CANADIAN J. OF CRIMINOLOGY 309 (1993); Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL’Y 395 (2013); Barry C. Feld, *Juveniles’ Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26 (2006); Barry C. Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 LAW & SOC’Y REV. 1 (2013); A. Bruce Ferguson & Alan C. Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39 (1970); Thomas Grisso, *Juveniles’ Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134 (1980); Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2006 WIS. L. REV. 431; Michele LaVigne & Gregory J. Van Rybroek, *Breakdown in the Language Zone: the Prevalence of Language Impairments among Juvenile and Adult Offenders and Why it Matters*, 15 U.C. DAVIS J. JUV. L. & POL’Y 37, 74-77 (2011); *see also* THOMAS GRISSO, EVALUATING COMPETENCIES: FORENSIC ASSESSMENTS AND INSTRUMENTS 113-55 (1986); Thomas Grisso, *Adolescents’ Decision Making: A Developmental Perspective on Constitutional Provisions in Delinquency Cases*, 32 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3 (Winter 2006).

The Supreme Court also recognized this empirical data in *J.D.B. v. North Carolina*, observing that “[t]ime and again,” the Court has taken into account the constitutional implications of the inherent immaturity and vulnerability of youth, including in “the specific context of police interrogation”:

“We have observed that children ‘generally are less mature and responsible than adults,’ *Eddings*, 455 U.S., at 115–116; that they ‘often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them,’ *Bellotti v. Baird*, 443 U.S. 622, 635 (1979) (plurality opinion); that they ‘are more vulnerable or susceptible to . . . outside pressures’ than adults, *Roper*, 543 U.S., at 569; and so on. *See Graham v. Florida*, 560 U.S. [48, 68,] . . . (2010) (finding no reason to ‘reconsider’ these observations about the common ‘nature of juveniles’). Addressing the specific context of police interrogation, we have observed that events

that ‘would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.’ *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion); see also *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (‘[N]o matter how sophisticated,’ a juvenile subject of police interrogation ‘cannot be compared’ to an adult subject). Describing no one child in particular, these observations restate what ‘any parent knows’ – indeed, what any person knows – about children generally. *Roper*, 543 U.S., at 569.^{FN5}

“^{FN5} Although citation to social science and cognitive science authorities is unnecessary to establish these commonsense propositions, the literature confirms what experience bears out. See, e.g., *Graham v. Florida*, [560 U.S. 48, 68,] 130 S. Ct. 2011, 2026 (2010) (‘[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds’).”

(*J.D.B. v. North Carolina*, 564 U.S. at 272-73 & n.5.)

See also *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (explaining that the Court has recognized, based on “science and social science” as well as “common sense” and “what ‘any parent knows,’” that “children are constitutionally different from adults for purposes of sentencing” because, *inter alia*, “children have a “lack of maturity and an underdeveloped sense of responsibility,” leading to recklessness, impulsivity, and heedless risk-taking,” and “children ‘are more vulnerable . . . to . . . outside pressures’”).

The New York Court of Appeals has similarly recognized that the very nature of adolescence causes juveniles to be less able than adults to weigh consequences and to make informed, meaningful judgments, even on highly important matters. See, e.g., *People v. Mitchell*, 2 N.Y.3d 272, 275-76, 810 N.E.2d 879, 881-82, 778 N.Y.S.2d 427, 429-30 (2004) (establishing a more protective rule for the invocation of the state constitutional right to counsel in juvenile delinquency and juvenile offender cases because “[c]hildren of tender years lack an adult’s knowledge of the probable cause of their acts or omissions and are least likely to understand the scope of their rights and how to protect their own interests . . . [and they] may not appreciate the ramifications of their decisions or realize all the implications of the importance of counsel”); *In the Matter of Benjamin L.*, 92 N.Y.2d 660, 669, 708 N.E.2d 156, 161, 685 N.Y.S.2d 400, 405 (1999) (establishing a more protective rule for the operation of the state constitutional right to a speedy trial in juvenile delinquency cases because “[t]ypically, a juvenile . . . is unlikely to appreciate the importance of taking affirmative steps toward the ultimate resolution of the case, and is just as unlikely to possess the means and sophistication to do so” and “[m]oreover, many youths in juvenile proceedings suffer from educational handicaps and mental health problems, which undermine their capacity to anticipate a future presentment and to appreciate the need to take self-protective measures”).

Our long experience in the field has persuaded us that the limited protections in the current version of Family Court Act § 305.2 are insufficient to guard against false confessions and a host of other problems that regularly arise when the police interrogate juvenile suspects. We strongly support the reforms that would be made by S4980A.

If there is any additional information you would like us to submit, or if there are any questions you or other members of the Legislature would like us to answer, we would be very glad to do so.

Respectfully,

A handwritten signature in cursive script, appearing to read "Martin Guggenheim".

Martin Guggenheim
Fiorello LaGuardia Professor of
Clinical Law

A handwritten signature in cursive script, appearing to read "Randy Hertz".

Randy Hertz
Professor of Clinical Law

Memorandum in Support of S.2800/A.5891

I am writing to express my strong support for S.2800/A.5891, which would amend the Family Court Act and Criminal Procedure Law consistent with a large body of scientific research on adolescent development and juvenile understanding of *Miranda* rights.

I am an Assistant Professor of Psychology at John Jay College of Criminal Justice and am both a psychologist and an attorney. My expertise is on adolescent development as it relates to youths' functioning within the justice system, and I conduct research and scholarship on juvenile interrogations and confessions. I write in support of this bill in my capacity as a researcher, because this bill recognizes what scientists in this area have long known: Adolescents are not capable of functioning like adults in interrogations, and special protections are needed to protect youths' rights and to prevent false confessions.

Forty years of research makes clear that children and adolescents are at profound risk of waiving their *Miranda* rights without understanding what those rights mean.¹ This is because adolescent brains are not yet fully developed—impacting youths' abilities to engage in abstract reasoning, manage stressful situations or intense emotions, and inhibit impulses.² Adolescents' neurological developmental immaturity makes it difficult for them to understand the importance of the *Miranda* warnings, understand the risk of waiving their rights, and undergo a sound decision-making process about whether to talk with police.³ As a result, almost all youth waive their *Miranda* rights and have to deal with the dire personal and legal consequences. Notably, youth involved in the justice system are more likely to be vulnerable than youth generally, in myriad ways—including facing higher rates of mental health problems and cognitive deficits.⁴

Once youth unknowingly, unintelligently or involuntarily waive their rights and are interrogated, they are at much higher risk than adults of giving a confession—and, alarmingly, at higher risk for

¹ Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134, 1155 (1980); Naomi E. Sevin Goldstein et al., *Juvenile Offenders' Miranda Rights Comprehension and Self-Reported Likelihood of Offering False Confessions*, 10 ASSESSMENT 359, 365–66 (2003).

² Laurence Steinberg, *The Science of Adolescent Brain Development and Its Implication for Adolescent Rights and Responsibilities*, in HUMAN RIGHTS AND ADOLESCENCE 59, 64 (Jacqueline Bhabha ed., 2014).

³ Naomi E.S. Goldstein, Emily Haney-Caron, Marsha Levick, & Danielle Whiteman, *Waving Good-Bye to Waiver: A Developmental Argument against Youths' Waiver of Miranda Rights*, 21 LEGIS. & PUB. POL'Y 1, 24-28 (2018).

⁴ *Id.*

giving a *false* confession.⁵ The same deficits in decision making and emotion regulation that contribute to high rates of youth *Miranda* waiver also makes youth vulnerable to police pressure to confess, such that even a youth who did not commit a crime may come to confess to having done so.⁶ This has profound consequences for youth, including wrongful conviction, but also harms society's interest in bringing the true offender to justice.

For these reasons, leading scientists and legal advocates have called for legal reforms to protect youth during interrogation and protect children and adolescents from the very serious consequences of waiving rights they do not fully comprehend.⁷ The proposed legislation is consistent with the available science in taking meaningful steps to protect children and adolescents from high-pressure police interrogation. It does this by recognizing that youth should only be interrogated in cases in which it is absolutely necessary, and by acknowledging that many youth will not be able to make a reasoned decision about waiving their rights without consultation with counsel. When police do not take these reasonable steps to protect youth's constitutional rights and protect against false confessions, this legislation provides the only appropriate remedy: precluding the use of these statements from being used against the youth a trial.

This bill is consistent with science on adolescent development, consistent with a large body of research on adolescent interrogation and confession, and in line with best practices. I urge the New York State Legislature to pass this important legislation and bring New York law in line with available scientific knowledge.



Emily Haney-Caron, J.D., Ph.D.
Assistant Professor of Psychology
John Jay College of Criminal Justice

⁵ See generally, e.g., Emily Haney-Caron, Naomi E.S. Goldstein, & Constance Mesiarik, *Self-Perceived Likelihood of False Confession: A Comparison of Justice-Involved Juveniles and Adults*, 45 CRIM. JUST. & BEHAV. 1955 (2018).

⁶ Barry C. Feld, *Behind Closed Doors: What Really Happens When Cops Question Kids*, 23 CORNELL J.L. & PUB. POL'Y 395, 433-50 (2013)

⁷ See, e.g., Goldstein et al., *supra* note 3, at 61-67.



VCU L. Douglas Wilder School of Government and Public Affairs

To: Members of the New York legislature
From: Hayley Cleary, MPP, PhD, Associate Professor of Criminal Justice
Date: 7 April 2021
Re: **S.2800/A.5891**

I am writing to **offer my strongest support for the proposed amendment to New York's Family Court Act**. This evidence-based bill conforms to contemporary scientific research on adolescent development and best practices for the custodial interrogation of adolescent suspects.

I am an Associate Professor of Criminal Justice at Virginia Commonwealth University in Richmond, Virginia. As a developmental psychologist, I specialize in adolescent behavior and decision making in justice system contexts, and my particular area of expertise is police interrogation of juvenile suspects. I have reviewed this bill and firmly believe that if enacted, it will improve justice system processes and promote just outcomes for both law enforcement and youthful suspects.

Decades of research in basic and applied psychology, as well as more recent research in developmental neuroscience and specific studies on juvenile interrogations, make clear that adolescent suspects are routinely, systematically, and severely disadvantaged in police interrogations compared to adult suspects. The disadvantages manifest in several key areas, including Miranda comprehension and waiver, susceptibility to influence and coercion, and vulnerability to coerced and false confessions.

Abundant research shows that adolescents often misunderstand words and phrases commonly found in Miranda warnings, and even youth who do cognitively comprehend Miranda language may struggle to apply that content to their current situation.¹ Moreover, justice-involved youth are more likely to have intellectual disabilities and/or cognitive delays compared to other youth.² Police have developed strategies for minimizing the significance of the Miranda transaction, including first developing a rapport with the suspect or dismissing waiver procedures as a mere bureaucratic formality.³ Even when every effort is made to communicate the importance of Miranda rights and the implications of waiver, which is probably rare,⁴ there is little reason to expect an effect on juveniles' waiver decisions. Youth are conditioned to comply with requests from authority figures, and the vast majority of adolescents waive their Miranda rights and submit to police questioning without an attorney present.

¹ Goldstein, N. E. S., Kelly, S. M., Peterson, L., Brogan, L., Zelle, H., & Romaine, C. R. (2015). Evaluation of Miranda waiver capacity. In K. Heilbrun, D. DeMatteo, & N. E. S. Goldstein (Eds.), *APA handbook of psychology and juvenile justice* (pp. 467-488). Washington, DC: American Psychological Association.

² Kazdin, A. E. (2000). Adolescent development, mental disorders, and decision making of delinquent youths. In T. Grisso & R. G. Schwartz (Eds.), *Youth on trial: a developmental perspective on juvenile justice* (pp. 33-65). Chicago: University of Chicago Press.

³ Feld, B. C. (2013). *Kids, cops, and confessions: Inside the interrogation room*. New York: New York University Press.

⁴ Cleary, H. M. D., & Vidal, S. (2016). Miranda in actual juvenile interrogations: Delivery, waiver, and readability. *Criminal Justice Review*, 41(1), 98-115. doi:10.1177/0734016814538650

Once police interrogation has commenced, youths' developmental vulnerabilities manifest in additional ways. Youth are more suggestible to negative feedback from interrogators⁵ and more likely to comply with requests from authority figures.⁶ They have incomplete or inaccurate information about police interrogation practices; for example, few youth know that police can lie during interrogations.⁷ These vulnerabilities are especially concerning because police report using the same interrogation techniques with adolescents as they do with adults, including psychologically manipulative techniques⁸ such as lying about evidence. These are just a few of the reasons why juveniles require additional legal protections in the interrogation room.

It is well known that youth are especially vulnerable to falsely confessing;⁹ indeed, youth are overrepresented in studies of documented false confessions.¹⁰ False confessions pave the way toward wrongful convictions, and the number of exonerations involving a juvenile false confession is steadily increasing. However, it is important to remember that youths' vulnerabilities are driven by incomplete brain development, and this applies to both innocent and guilty youth. In other words, adolescents' self-regulation difficulties, inability to think about future outcomes, and susceptibility to coercion are not limited to false confession cases. If adolescents' decision making and behavior are influenced by transient developmental factors outside of their control, then due process dictates that all youth deserve and require additional legal protections when placed in situations of legal jeopardy.

In sum, there is scientific consensus on the notion that adolescents are neurobiologically distinct from both children and adults in ways that directly impact decision making, including decision making in legal contexts such as police interrogation. This bill promotes evidence-based solutions to many of the problems inherent in juvenile interrogations. With this bill, New York has an opportunity to set a national standard in implementing needed protections for juvenile suspects. I strongly encourage members of this legislature to seize this opportunity to further protect youthful suspects in your state.

Best regards,



Hayley Cleary, MPP, PhD
Associate Professor of Criminal Justice
Virginia Commonwealth University

⁵ Richardson, G., & Kelly, T. P. (2004). A study in the relationship between interrogative suggestibility, compliance and social desirability in institutionalised adolescents. *Personality and Individual Differences*, 36, 485-494.

⁶ Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., . . . Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27, 333-363. <http://dx.doi.org/10.1023/A:1024065015717>

⁷ Woolard, J. L., Cleary, H. M. D., Harvell, S. A. S., & Chen, R. (2008). Examining adolescents' and their parents' conceptual and practical knowledge of police interrogation: A family dyad approach. *Journal of Youth and Adolescence*, 37(6), 685-698. doi:10.1007/S10964-008-9288-5

⁸ Cleary, H. M. D., & Warner, T. C. (2016). Police training in interviewing and interrogation methods: A comparison of techniques used with adult and juvenile suspects. *Law and Human Behavior*, 40(3), 270-284. doi:10.1037/lhb0000175

⁹ Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, R. A., & Redlich, A. D. (2010). Police-induced confessions: Risk factors and recommendations. *Law and Human Behavior*, 34(1), 3-38. doi:10.1007/s10979-009-9188-6

¹⁰ Drizin, S. A., & Leo, R. A. (2004). The problem of false confessions in the post-DNA world. *North Carolina Law Review*, 82, 891-1007.



Antoinette Kavanaugh Ph.D., ABPP
Forensic Clinical Psychologist

Knowledge, Clarity and Passion at the Intersection of Psychology and Law.

April 23, 2021

To whom it may concern:

I am Antoinette Kavanaugh, Ph.D., ABPP., a forensic clinical psychologist licensed in multiple states. I routinely conduct evaluations of juveniles and young adults for matters which brings them before the court. For over ten years I was the clinical co-director of the Cook County Juvenile Court, which is the oldest juvenile court in the country. Based on my knowledge of the literature related to adolescent development and empirical findings related to youth's ability to provide a knowing, intelligent that I support bill S.2800/A.5891.

Youth is a trait that makes one vulnerable to not understanding Miranda rights. Social scientists have been studying this phenomena for the past twenty years. The first study was conducted by Dr. Thomas Grisso. He demonstrated that youth display significantly more misunderstanding to their Miranda rights than do adults. Twenty years ago he argued that requiring youth, especially those under age 16, to consult with legal counsel before waiving their rights was "the best available remedy" to the lack of comprehension (Grisso, 1980 p. 1163.) Dr. Grisso's findings have been replicated and expanded upon. For example, in 2015 Zelle, Riggs Romaine & Goldstein found that the vast majority of the youth already involved in the justice system displayed significant misunderstandings of the fundamental concepts of the Miranda warning as well as inability to accurately define key words of the warnings. One might argue that a potential solution would be to develop a juvenile or simplified version of the warnings. Despite attempts, researches have yet to develop a simplified version of the warnings that could be understood by at least half of the youth studied (e.g., Rogers et al, 2016).

Researchers have also examined the reasoning youth give for waiving their rights. Consistently, their rationale reflects fundamental misunderstandings of the rights. Sharf et al (2017) studied this from the perspective of youth who had been arrested. Nearly half of the youth explained they waived their right to silence because they erroneously thought that if the exercised that right, law enforcement would think they were guilty.

Although research finding regarding youths' ability to comprehend their Miranda rights has been consistent for the past twenty, these research paradigms failed to include some "real world" variables such as sleep deprivation or stress. Based on my experience interviewing youth, when many youth waived their rights, they were sleep deprived and/or stressed. Research as demonstrated sleep deprivation and stress negatively impact youth's decision making and

behavior (see De Bruin (2017), Galvan, 2013Tashjian, (2017), Uy, 2017). However, these variables were not included in the studies exploring youths' understanding of their Miranda warnings. Consequently, left on their own, youth may be greater risk for not understanding their Miranda rights than research has demonstrated.

Researchers, including Dr. Grisso twenty years ago, have contemplated the utility of requiring a youth to consult parent instead of an attorney. Woolard et al (2008) conducted the most detailed study to date exploring understanding and exercising Miranda rights conceptualize youth and their parent(s) as a dyad. Nearly half of the parents displayed a fundamental misunderstanding of the Miranda warnings and/or the "rules" of a law enforcement interrogation. Specifically, nearly half of the parents did not understand that the police are allowed to lie to suspects. Outside of the research lab, this misunderstanding could lead parents to encourage their child to waive their rights in conditions in which legal counsel might give the opposite advise.

In closing based on my knowledge of adolescent development and empirical findings related to youths' ability to understand their Miranda Rights, I fully support requiring youth to consult with an attorney before their can waive their constitutional rights.

Sincerely,

A handwritten signature in blue ink that reads "A. Kavanaugh Ph.D., ABPP". The signature is written in a cursive style.

Antoinette Kavanaugh, Ph.D., ABPP
Board Certified Forensic Psychologist

Appendix References

- De Bruin, E. J., Van Run, C., Staaks, J. & Meijer, A. M. (2017). Effects of sleep manipulation on cognitive functioning of adolescents: A systematic review. *Sleep Medicine Reviews, 32*, 45-57. doi:10.1016/j.smrv.2016.02.006
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April 9, 2021

Dear Assemblywoman Joyner and Senator Bailey:

I am writing this letter to indicate my support of the proposed legislation in S.2800 and A.5891, which is an amendment to New York State Family Court Act 305.2, concerning the custodial interrogation of children. I am an Associate Professor of Forensic Psychology in the Faculty of Social Science and Humanities at Ontario Tech University, and Member-at-Large of the American Psychology-Law Society (Division 41 of the American Psychological Association). My PhD is in Psychology and Social Behavior from the University of California, Irvine where I specialized in Developmental Psychology before pursuing postdoctoral training in Forensic Developmental Psychology at the University of Cambridge (UK). For the last 18 years, I have conducted and published research at the intersection of developmental psychology and the law with a focus on how children's and adolescents' developmental capacities and limitations can affect their participation in the legal system including with respect to investigative interviews and interrogations.

The current research evidence is clear: Children and teenagers, as a class, differ from adults with respect to their cognitive, psycho-social, and emotional functioning. They exhibit several characteristics (e.g., deference to adult authority, suggestibility, difficulty evaluating reward and risk, impulsivity) that put them at enhanced risk of negative outcomes, such as false confessions, in the interrogation room. Indeed, using multiple methodologies, including examining proven false confession cases, researchers have demonstrated that youth are at greater risk for falsely confessing compared to adults. Yet, in current practice, youth have inadequate protections in police interrogation rooms in the United States.

The proposed legislation in S.2800 and A.5891 would help to protect vulnerable individuals ages 17 and under during custodial interrogations. If you have any questions or need further information, I can be reached at lindsay.malloy@ontariotechu.ca or (647) 549-9026 (mobile).

Sincerely,

A handwritten signature in black ink that reads 'Lindsay C Malloy'.

Lindsay C. Malloy, Ph.D.
Associate Professor

Memo in support of S.2800/A.5891

April 6, 2021

We are a group of New York City based scientists with members who specialize in developmental psychology and neuroscience. We would like to express our support for the proposed legislation S.2800/A.5891. Developmental science strongly suggests that normally developing adolescents do not have the capacity to make adult-like choices with respect to interrogations. The human brain continues to develop well into the early twenties,¹ with brain systems associated with reasoning being among the last to mature.² Therefore, it is likely that most teens in the justice system lack the cognitive capacity to understand Miranda warnings and the implications of waiving their rights.³

Continued brain development throughout adolescence also makes it difficult for adolescents to exercise adult-like self-control. Even for teens who are able to comprehend the language in Miranda warnings, typically developing adolescents prioritize immediate rewards stemming from their decisions (e.g., waiving rights because they falsely believe they will be released more quickly),^{4,5} and do not adequately appreciate the potential long-term consequences of waiving their rights. Furthermore, adolescents often make poor decisions in emotionally charged contexts.⁶ This type of impulsive decision making is thought to be reflected in both higher rates of Miranda waivers and in higher rates of false confessions in adolescents.^{7,8}

Current law requires that law enforcement attempt to contact a juvenile's parents to advise in a Miranda or interrogation decision. However, evidence suggests that parents have difficulty making decisions on behalf of their children in stressful or emotional situations.^{9,10} Additionally, the nature of the parent-child relationship presents conflicts of interest in legal contexts, as a parent's interests may not be fully aligned with their child's.¹¹

The recommendations proposed by S.2800/A.5891 that 1) interrogation only be performed when someone's life or health is in danger, 2) mandatory and non-waivable consultation with an attorney be provided to assure that a youth will receive necessary and appropriate legal advice, and 3) if these conditions are not met, any information provided by the juvenile is deemed involuntary are closely aligned with developmental science research. These provisions would better protect adolescents in the juvenile justice system at this formative stage of development.

The Scientist Action and Advocacy Network (ScAAN) is a New York-based group of scientists who partner with non-partisan and partisan organizations that are creating positive social change. www.scaan.net and info@scaan.net.

Related reports from ScAAN

- Scientific support for a developmentally informed approach to Miranda rights
 - bit.ly/ScAAN_Miranda
- Scientific support for raising the age of criminal responsibility
 - bit.ly/ScAAN_RTA

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To: Senator Jamaal T. Bailey, Sponsor

Date: April 7, 2021

Re: Memorandum in Support of S.2800/A.5891

I, Vincent Schiraldi, am writing to express my strong support of S.2800/A.5891, “An act to amend the family court act and the criminal procedure law, in relation to the custodial interrogation of juveniles by law enforcement,” which aims to protect children’s right to counsel by requiring that children be afforded the opportunity to consult with legal counsel prior to any questioning by law enforcement and before waiving any Miranda rights.

My interest in advancing this legislation draws on my vast experience working on youth and criminal justice reform throughout my career. As a Senior Research Scientist at Columbia’s School of Social Work and Co-director of the Justice Lab at Columbia, my work has focused on ending mass incarceration by pushing systems to pursue bold changes in various areas, including youth and emerging adult justice, as well as probation and parole. In particular, when it comes to youth, I know from my past and current work with youth and emerging adults how critical it is to recognize the distinct developmental stages they are in and how important it is to have adults that can support them.

As Director of the Department of Youth Rehabilitation Services for the District of Columbia, I took over an agency on the cusp of being placed into court receivership, after decades of operating in an abusive and unconstitutional manner. During my tenure, I closed the notorious Oak Hill Youth Correctional Facility, replacing it with neighborhood-based community programs and a smaller, less institutional secure facility, which led to significant drops in both incarceration and recidivism rates. Later, as New York City Department of Probation Commissioner, I shaped the watershed “Close to Home” legislation, which transferred all of New York City’s youth from abusive state facilities to community-based programs and facilities within the five boroughs. I also made Probation more community- and evidence-based through the ground-breaking Neighborhood Opportunity Network (NeON) initiative and substantially reduced failures-to-report and violations of probation, resulting in the highest completion rate in the state (80% vs. state average of 65%) and a revocation rate one-third the state average. I also helped the City raise \$30 million to focus resources on young men of color under the Department’s supervision. More recently, as Senior Advisor to the Mayor Bill de Blasio’s Office of Criminal Justice, I aimed to reduce the number of unnecessary school arrests and suspensions, improve outcomes for young adults in the criminal justice system, and push to improve conditions at Riker’s Island.

Given my background, I know how important it is to provide children with an opportunity to consult with counsel before police questioning, which can be a terrifying experience. This bill would assist in upholding children’s constitutional right to counsel, ensure the integrity of investigations, decrease youth detention, and reduce recidivism.¹

¹ Barry Holman & Jason Ziedenberg, Justice Policy Institute, *The Danger of Detention: the Impact of Incarcerating youth in Detention and other Secure Facilities* (2006)

Juvenile defense attorneys act as a critical buffer against injustices and are at the heart of ensuring the defense system established for youth operates fairly, accurately, and humanely.² Given the impact of developmental immaturity on adolescent decision-making, youth are more susceptible to police coercion than adults, and are more likely to waive their Miranda rights or make statements against their own best interest.³ Because of this, youth are in more need of legal counsel during police interrogation.⁴ Without initial legal representation the due process interests of thousands of youth annually is significantly compromised.⁵

In many juvenile courts across the country, including New York City, defense counsel isn't appointed until after the initial hearing, often meaning that a child's liberty interests may be affected. This can create negative impacts on youth, especially those youth who are detained pretrial. The practice of appointing counsel after a child's initial hearing continues in spite of research establishing the potentially harmful influence of detention on a child's development. Research continues to show that youth detention has a profoundly negative impact on young people's mental and physical well-being, their education, their employment, and can also increase the risk of recidivism.⁶

The proposed legislation provides important safeguards for children by providing the opportunity to consult with legal counsel prior to any questioning by law enforcement. This bill can ensure youth have a full and meaningful understanding of their due process rights and the consequences of giving them up, guard against false confessions to minimize wrongful convictions⁷, reduce the harm caused by detention, and reduce recidivism rates.

For these reasons, I extend my support for the New York State Legislature to pass this bill and support children's constitutional right to counsel.

Sincerely,



Vincent Schiraldi

² Puritz, P., Thureau, L., & Goldberg, S. 8 (2012). *National Juvenile Defense Standards*. Washington, DC: National Juvenile Defender Center.

³ Puritz, P., Thureau, L., & Goldberg, S. 59 (2012); Lawrence Steinberg et al., Are Adolescents More Mature than Adults: Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop", 64 *am. PsyCh.* 583 (2009) (adolescents are able to make much better decisions when informed and unhurried than when under stress and peer or authority influences, indicating adolescents would be less likely to waive rights if able to consult with counsel first); cf. United States Department of Justice Civil Rights Division, findings regarding Department of Justice investigation of Lauderdale County youth Court, Meridian Police Department, and Mississippi Division of youth services 6 (2012) (finding the county failed to meaningfully provide juveniles with counsel at detention or adjudication hearings, when incarceration is possible, to protect against self-incrimination, or to provide an opportunity to cross-examine witnesses), available at <http://www.justice.gov/iso/opa/resources/2642012810121733674791.pdf>

⁴ "Interrogation." *NJDC*, njdc.info/interrogation/.

⁵ Puritz, P., Thureau, L., & Goldberg, S. 8 (2012). *National Juvenile Defense Standards*. Washington, DC: National Juvenile Defender Center.

⁶ Barry Holman & Jason Zidenberg, Justice Policy Institute, *The Danger of Detention: the Impact of Incarcerating youth in Detention and other Secure Facilities*. 2, 3 (2006);

⁷ Lindsay C. Malloy et al., *Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders*, 38 *L. & HUM. BEHAV.* 181, 182 (2014)

Memo in Support of A.6982-A/S.4980
A Bill to Protect Children who are Subject to Custodial Interrogation

The Children's Rights Society, Inc. has been the county-wide provider of representation for juveniles in the Orange County Family Court since 1996. We strongly support the passage of A.6982A-A/S.4980, which amends the Family Court Act and Criminal Procedure Law to better protect the rights of children arrested as juveniles by requiring that they consult with an attorney prior to waiving any of their *Miranda* rights.

It is well-settled law that an individual in police custody, whether an adult or a child, who is subject to interrogation, be advised of their *Miranda* rights.¹ This ensures that any waiver of the right to remain silent is made knowingly, intelligently and voluntarily. With respect to children, Section 305.2 of the Family Court Act imposes the additional requirement that a child's parent or other person legally responsible for their care be present when the police administer *Miranda* rights to the child. However, experience has shown that the presence of a parent or other lay person legally responsible for the child often is not effective in ensuring that a child understands the implications of the waiver of *Miranda* rights.

This bill recognizes the importance of ensuring that juveniles thoroughly understand their rights before choosing to speak with a police officer. Children are, of course, vulnerable by their nature, and therefore society bestows more legal protections upon them. It is universally accepted that the stages of brain development are such that a child cannot fully comprehend the consequences of their decisions in general. Particularly when they are faced with the crucial choice of whether to waive their *Miranda* rights, we must ensure that they fully understand the implications of doing so. A lay parent or other person legally responsible for the child, when faced with the possibility of their child being in trouble with the law, may not be able to make an objective decision or give useful advice.

Passage of this bill will help guarantee that juveniles will have the support necessary to make the decision about whether to give up their right to remain silent. Further, we cannot stress enough the important role an attorney can play in preventing false confessions. Due to the impressionable nature of children, they are far more susceptible to making false confessions than adults. They simply lack the capacity to make these potentially life changing decisions without the objective advice and counsel of an attorney. Only an attorney is able to explain, with the benefit of attorney-client privilege, the pros and cons of choosing to answer a police officer's questions.

For these reasons, and those outlined in the sponsor's Memorandum in Support, we urge the New York State Legislature to pass this critical legislation to ensure that juveniles' rights under *Miranda* are fully protected.

¹ Miranda v. Arizona, 384 U.S. 436 (1966)



MEMORANDUM IN SUPPORT
S 4980A/A 6982 (Bailey/Joyner)

The Association of Legal Aid Attorneys, UAW Local 2325 (ALAA) strongly support the passage of S4980A/A6982, which adds critical protections to the Family Court Act and Criminal Procedure Law that will clarify and safeguard the rights of children in the custody of law enforcement from police interrogation. This bill requires a parent or guardian be immediately notified when their child is arrested. Second, under this bill, law enforcement can only interrogate children when the officer reasonably determines that the child’s life, health, or the life or health of another individual, is in imminent danger and that the child may have information that would assist the officer in taking protective action. Finally, this legislation requires children consult with an attorney before they can be subjected to custodial interrogation. The decision to waive one’s constitutional right to be silent has enormous consequences, which is why the law requires the decision to be “knowing, voluntary, and intelligent.” *See Miranda v Arizona*, 384 U.S. 436 (1966). Because children are fundamentally different than adults, different safeguards are required for a child to make a knowing, voluntary, and intelligent decision about a *Miranda* waiver.

ALAA is the nation’s oldest union of legal service workers. We represent 1500 attorneys, social workers, paralegals, and administrative staff at 8 indigent legal service providers throughout New York, including The Legal Aid Societies of New York City, Orange County and Nassau County, Youth Represent, CAMBA Legal Services, Neighborhood Defender Services of Harlem, the New York Legal Assistance Group, and Federal Defenders. Our union exists to both empower workers, and to make the systems that indigent New Yorkers must exist in more equitable. Our members zealously fight for thousands of children and adolescents that are subject to interrogation by law enforcement every year in criminal court and family court. Further, our members serve these children when their cases result in collateral consequences that impact immigration status, housing, foster care, and employment.

The importance of additional Miranda protections for adolescents is well-grounded in science. The prefrontal cortex of the brain – which largely governs decision-making and judgment –

generally does not mature until adulthood.¹ As a result, children are not yet able to consider the long-term consequences of their actions or to resist environmental pressures as well as adults. The ability to consider environmental pressures are precisely the kinds of issues at play in a custodial interrogation setting.² Adolescents particularly struggle to process information and make sound decision making in stressful situations, such as during interrogation. This is exacerbated by the fact that children that have cognitive delays are disproportionately likely to have encounters with law enforcement.

Countless children and adolescents in custody make statements against their interest or false confessions because existing laws do not recognize that they must be treated differently than adults during interrogation. One of the most horrific recent examples of this is the case of the Central Park Five, where five teenagers aged 14-16, were convicted of several violent acts based solely upon false confessions that were coerced by law enforcement. As a result, each of these children were incarcerated for years, and their convictions were only overturned when the actual perpetrator confessed. This is only one instance of how the existing law fails to safeguard children in custody, and our members represent hundreds of children whose statements have led to convictions that will follow them for the rest of their lives.

S4980A/A6982 provides significant and necessary improvements to the existing law. While current law requires law enforcement to immediately notify an arrest child's parent of the arrest, this bill will clarify that the immediate notification must take place before the officer takes the child to another location. In an era in which all officers are equipped with cell phones, they are able to make contact with parents without first taking the child to a station house. Second, while the current law dictates children can only be interrogated when "necessary," that term is not defined. This bill will reduce the instances when youth can be interrogated by defining "necessary" as only when "the officer reasonably determines that the child's life or health, or the life or health of another individual, is in imminent danger and that the child may have information that would assist the officer in taking protective action." Further, this bill affords children a non-waivable right to speak with an attorney by phone, video, or in person before waiving their *Miranda* rights. This will drastically limit instances where children are pressured to speak to law enforcement, which is an inherently coercive environment for children.

This legislature has recently passed monumental criminal justice reforms that have corrected some of the inequities in New York's criminal and juvenile justice systems. Passing S4980A/A6982 will make New York a leader in respecting the rights and dignity of the most marginalized children in the state.

¹ Linda B. Chamberlain, *The Amazing Teen Brain: What Every Child Advocate Needs to Know*, 28 A.B.A. Child L. Prac. No. 2 at 17-18 (April 2009).

² See Gold